

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . CR. NO. H-12-691-2
VS. . HOUSTON, TEXAS
DAVID MORSE BARRY . APRIL 22, 2014
9:00 A.M. to 3:37 P.M.

DAY 2 of 5
TRANSCRIPT of BENCH TRIAL
BEFORE THE HONORABLE LEE H. ROSENTHAL
UNITED STATES DISTRICT JUDGE

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District Court, Southern District of Texas.

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

APPEARANCES CONTINUED

ALSO PRESENT:

MR. JEFFERY G. CHAPPELL

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16
17
18
19
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21
22
23
24
25

INDEX

PAGE

GOVERNMENT'S WITNESSES

Jeffery G. Chappell
Cross-examination continued by Mr. Jarvis 241
Redirect Examination by Ms. Zack 364
Recross-examination by Mr. Jarvis 395
Mark Peterson
(Testimony read.) 410

GOVERNMENT RESTS 423

MOTIONS 423

* * *

P R O C E E D I N G S

(Open court, Defendant present.)

THE COURT: Good morning, everybody. Are we ready to proceed?

MS. ZACK: Yes, Your Honor. Good morning.

MR. JARVIS: Yes, ma'am.

THE COURT: Anything we need to take up before we resume with the testimony?

MS. ZACK: Yes.

THE COURT: You may all be seated.

MS. ZACK: Yes, Your Honor.

THE COURT: All right.

MS. ZACK: You had asked us to inquire about any reports --

THE COURT: Yes.

MS. ZACK: -- that may have been prepared by Special Agent McGaha. Special Agent Chappell spoke to him yesterday. Special Agent McGaha did not prepare a written forensic report. What he did was an EnCase preview prior to the CPS trial, and those were the images he supplied to CPS that were used in the CPS trial.

Mr. Jarvis represented Mr. Barry in the CPS trial, so he had access to everything that was previously done. And those pictures, some of which -- all of which are contained in the DVDs but some of which we have selected for presentation

1 here, but there was no completed forensic report like Special
2 Agent Chappell did in this case.

3 *THE COURT:* All right. Very good. Thank you.

4 *MS. ZACK:* Yes, Your Honor.

5 *THE COURT:* All right. In light of the request that
6 the Court enter findings and conclusions, does the Government
7 have any proposed findings and conclusions that it wishes me to
8 consider? You probably need to.

9 *MS. ZACK:* Not at this time, Your Honor. I wasn't
10 prepared to answer that question, but I could by the end of --

11 *THE COURT:* Which is why I asked Mr. Jarvis yesterday
12 if that's what he intended, so we would all be somewhat
13 prepared to do that. And in any bench trial, criminal case, I
14 think it's a pretty good assumption that there will be a need
15 for or a request for findings and conclusions. So I would
16 suggest that you-all have some proposed findings and
17 conclusions --

18 *MS. ZACK:* Yes, Your Honor.

19 *THE COURT:* -- as quickly as you can get them done.

20 *MS. ZACK:* Yes, Your Honor.

21 *THE COURT:* And on behalf of Mr. Barry as well, of
22 course --

23 *MR. JARVIS:* Yes, ma'am.

24 *THE COURT:* -- happy to consider them. Are we ready?

25 *MR. JARVIS:* Yes, ma'am.

Chappell - Cross by Mr. Jarvis

1 *THE COURT:* You remain under oath, sir.

2 *THE WITNESS:* Yes, ma'am.

3 *(Jeffery G. Chappell, Government's witness, previously*
4 *sworn.)*

5 **CROSS-EXAMINATION CONTINUED**

6 BY MR. JARVIS:

7 Q. All right. Agent Chappell, I think the last picture I
8 looked at was 4P. Is that what you remember, the boys laying
9 on the floor and one of them uncovered and the other one
10 covered asleep?

11 *THE COURT:* Can you use the mike, sir?

12 *MR. JARVIS:* Yes, ma'am.

13 *THE COURT:* Thank you.

14 A. Yes, sir, I believe that is correct.

15 BY MR. JARVIS:

16 Q. Okay. Now, you gave us some new information today, this
17 morning concerning the pictures and their path. Do you have
18 those pieces of paper with you?

19 A. Yes, sir.

20 Q. Let's go to the one on 4P, the one we finished with
21 yesterday and look at it. And then we'll pick it up from
22 there. Okay? Now, my understanding is that on 4P, according
23 to your forensic analysis, it was created -- the created date
24 is 6-18-2010, correct? Are you there yet?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. And the created date is when it was put on the
2 computer, right?

3 A. That is correct.

4 Q. So that doesn't tell us when the picture was taken?

5 A. No, sir.

6 Q. It just gives us a date. We know it wasn't taken after
7 that?

8 A. Correct.

9 Q. All right. But then the modified date, isn't that usually
10 the date that somebody went on and did something with the
11 image?

12 A. No, sir, not in this case. Starting with Windows Vista,
13 the operating system recording, how it records information on
14 files changed. Starting with Windows Vista, the only date that
15 is significant is the created date. The modified date is
16 something that the operating system handles. There's no rhyme
17 or reason. It can be the day before the image is actually put
18 on the computer. It could be several days after. It's -- no
19 one's been able to really nail down exactly what the modified
20 date does. So, forensically we ignore the modified date. It
21 doesn't really do anything.

22 Q. And when was this change?

23 A. With Windows Vista. When Microsoft came out with Windows
24 Vista, which is what the operating system Mr. Barry has on his
25 laptop.

Chappell - Cross by Mr. Jarvis

1 Q. And when was that, approximately?

2 A. 2004, 2005, somewhere around there.

3 Q. So since 2005, if it's a Windows Vista operating system,
4 the modified date doesn't mean anything?

5 A. Correct.

6 Q. Okay. So the created date is when it got put on the
7 computer and you don't have -- and this picture was taken by
8 Noonan's camera, correct?

9 A. Correct.

10 Q. And because we don't -- you don't have the date in his
11 camera, you can't tell us when this picture was taken, correct?

12 A. That is correct.

13 Q. Well, I'm looking at the selected images from the Casio,
14 which is exhibit -- Government's Exhibit 9. And these are just
15 the selected pictures. Is this picture in the disk itself,
16 which is, I'm assuming, Government Exhibit 8?

17 A. I believe it should be, yes, sir.

18 Q. Okay. All right. Well, let's move forward to 4G -- excuse
19 me, Q. This is the one with Noonan and one of the Barry boys
20 on the ground?

21 A. Yes, sir.

22 Q. Now, you don't have any evidence that Mr. Barry knew this
23 was being taken at the time, correct?

24 A. That is correct.

25 Q. And you don't have any evidence that Mr. Barry gave

Chappell - Cross by Mr. Jarvis

1 permission for this picture to be taken, do you?

2 A. That is correct.

3 Q. And you don't have any evidence that Mr. Barry was even in
4 the room and saw this picture being taken, do you?

5 A. No, sir.

6 Q. And you don't have any evidence that he instructed anybody
7 to take this picture, do you?

8 A. No, sir.

9 Q. All right. And there's no genitalia of the boy showing, is
10 there?

11 A. No, sir.

12 Q. Or of Mr. Noonan, just his bottom --

13 A. Correct.

14 Q. -- or his buttocks, correct?

15 A. Correct.

16 Q. All right. And the focal point appears to be just on them
17 laying on the bed -- or on the floor, excuse me, right?

18 A. Well, to me, sir, as soon as I look at the picture, my
19 focal point is going to the buttocks of Mr. Noonan and then
20 seeing the child there.

21 Q. Okay. And would you agree with me that the focus of the
22 picture changes from person to person?

23 A. It can be subjective, yes, sir, right.

24 Q. Okay. So reasonable people could disagree, correct?

25 A. Yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. For example, all these pictures that you have in
2 David Barry's computer, the Northern District and Special Agent
3 McGaha had and they haven't charged him with any of these, have
4 they?

5 MS. ZACK: Objection. Relevance.

6 THE COURT: Rephrase the question.

7 BY MR. JARVIS:

8 Q. These pictures were found on his computer by Special Agent
9 McGaha, correct?

10 A. Some of them, sir.

11 Q. Some of these pictures that you have in Exhibit No. 4,
12 right?

13 A. Yes, sir.

14 Q. And they haven't charged him with producing or possession
15 of these pictures even though they found them on his computer
16 in Wichita Falls, correct?

17 MS. ZACK: Objection. Relevance.

18 THE COURT: Sustained.

19 BY MR. JARVIS:

20 Q. Now, this is not an unnatural pose? People lay -- sleep
21 like this all the time, correct?

22 A. Yes, sir.

23 Q. And it's -- there's no sexual coyness or suggestion by
24 Mr. Barry's face -- I mean, excuse me, Mr. Noonan's face,
25 certainly not the boy's, he looks like he's asleep, right?

Chappell - Cross by Mr. Jarvis

1 A. In my opinion, actually there is.

2 Q. In their faces?

3 A. His -- well, I wouldn't say coyness, but his face, it's --
4 to me it's an odd expression.

5 Q. Okay. But there's no evidence that it was intended at the
6 time it was taken to elicit a sexual response in the viewer, is
7 there?

8 MS. ZACK: Objection. Calls for speculation.

9 THE COURT: I'll sustain that objection.

10 BY MR. JARVIS:

11 Q. Do you have any evidence or information saying that when it
12 was taken it was intended to cause a sexual response in the
13 viewer?

14 A. No, sir.

15 Q. All right. Then let's go to 4r. This is another one in
16 the bedroom pictures. One of the boys is holding a Superman
17 picture, correct?

18 A. Yes, sir.

19 Q. And the dog is in the picture, right?

20 A. Yes, sir.

21 Q. And you can't see the boy's penis, can you?

22 A. No, sir.

23 Q. But you can see Mr. Noonan's, right?

24 A. Correct.

25 Q. And it looks like Mr. Noonan is looking at the dog, not at

Chappell - Cross by Mr. Jarvis

1 the camera, correct?

2 A. Possibly the dog or the picture, yes, sir.

3 Q. Either one. And the boy's face is definitely looking at
4 the person or thing or the camera, right?

5 A. Correct.

6 Q. And in that one, that's the angle, again, that is --
7 suggests that the other boy took the picture, correct?

8 A. It's possible, yes, sir.

9 Q. And there's no erect penises, right?

10 A. No, sir.

11 Q. And you don't have the boy anywhere near Mr. Noonan's
12 penis, correct?

13 A. No, sir.

14 Q. And it doesn't appear that Mr. Noonan is touching him
15 anyplace in inappropriate, correct?

16 A. No, sir.

17 Q. And there's no sexual coyness or leering in the picture,
18 right?

19 A. No, sir.

20 Q. And you can't even tell if the boy is nude?

21 A. Correct.

22 Q. So, there's not -- that's not an unnatural pose either, is
23 it?

24 A. No, sir.

25 Q. It's just the boy showing a picture to whoever is taking

Chappell - Cross by Mr. Jarvis

1 the picture, right?

2 A. Yes, sir.

3 Q. Okay. And then moving to 4s, this is Mr. Noonan, the dog
4 again, looks like the cat's joined in, and one of the boys on
5 his right side, correct?

6 A. Yes, sir.

7 Q. And, again, the angle is such that it looks like somebody
8 short, like the other boy, took the picture, right?

9 A. It's possible, yes, sir.

10 Q. And you can see Mr. Noonan's right hand on or close to the
11 boy's buttocks, correct?

12 A. Yes, sir.

13 Q. But other than that, the boy is not looking at the camera,
14 and there's no erect penises, correct?

15 A. No, sir.

16 Q. And it doesn't look like Mr. Noonan has any type of
17 expression on his face, other than just looking at the camera,
18 correct?

19 A. Correct.

20 Q. And so this is not an unnatural pose for a young person to
21 be cuddled up in the arm or the side of a grownup, is it?

22 A. Yes -- to me, yes, sir, it is, given the fact that they're
23 both nude and the fact that that is not Mr. Noonan's child and
24 they're in the bed nude together and in a cuddling position,
25 that does strike me as unnatural.

Chappell - Cross by Mr. Jarvis

1 Q. If they're nudists, would that be unnatural for people that
2 are naked inside the house?

3 A. Again, a small child with an adult male, who is not related
4 to him, nude in the bed in this position, yes, sir, that would
5 be unnatural.

6 Q. If they were clothed would that be?

7 A. It wouldn't be as unnatural, but it would still seem
8 strange to me, yes, sir. I would still question that.

9 Q. And you don't know when this picture was taken, right?

10 A. No, sir.

11 Q. But according to what we received today, it was created,
12 which means put on the computer, June 18th, 2010, right?

13 A. That is correct.

14 Q. Okay. And you don't have any evidence today that David
15 Barry knew this picture was being taken, right?

16 A. No, sir.

17 Q. And you don't have any evidence that he gave Mr. Noonan
18 permission or one of the boys permission to take this picture,
19 right?

20 A. No, sir.

21 Q. And you don't have any evidence that he intended for this
22 to be child pornography or to elicit a sexual response to a
23 viewer, correct?

24 A. No, sir.

25 Q. All right. Then going to 4t. This is what y'all have

Chappell - Cross by Mr. Jarvis

1 labeled the Band-Aid picture, Band-Aid on leg. The dog and the
2 boy. Now, the boy obviously is naked. But there's not an
3 adult in there, correct?

4 A. No, sir.

5 Q. And it looks like the boy's petting the dog, right?

6 A. Yes, sir.

7 Q. So that wouldn't be an unnatural pose, for a boy to pet a
8 dog, would it?

9 A. No, sir.

10 Q. And they're laying on a floor, which is generally where
11 dogs lay. So that wouldn't be an unnatural place for a boy to
12 pet a dog, would it?

13 A. No, sir.

14 Q. So there's no suggestion in the boy's face that I can tell
15 that it's some kind of a sexual coyness or anything like that,
16 right?

17 A. No, sir.

18 Q. And without an adult around, there's no sexual coyness on
19 the part of an adult to add to the picture, right?

20 A. No, sir.

21 Q. So do you have any evidence that it was intended to elicit
22 a sexual response from a viewer?

23 A. At the time the picture was taken, no, sir.

24 Q. What about at a later time?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. So there's nothing about this, other than the
2 nudity, that suggests it could be considered child pornography,
3 correct?

4 A. Yes, sir.

5 Q. All right. And that one is out of the "Craig Houston"
6 file, correct?

7 A. "Craig Houston" and then the subfolder "Craig H."

8 Q. And that was created on June 13th, 2010, right?

9 A. Correct.

10 Q. Does your information you gave us today show us where or if
11 it went someplace else?

12 A. In what way? What do you mean, sir?

13 Q. That it left that computer and was transferred someplace
14 else?

15 A. No, sir.

16 Q. Okay. Do you have that information some place --

17 A. No, sir, there's no information indicating that.

18 Q. Let me ask my question first. Because you're answering it,
19 but I'm making sure I understand it. You can tell from your
20 forensic analysis of the computer if a picture was sent or IMed
21 someplace else, right?

22 A. And depending on the circumstances, sometimes, yes, sir, we
23 can.

24 Q. All right. And you don't have that information for this
25 picture, correct?

Chappell - Cross by Mr. Jarvis

1 A. No, sir, I do not.

2 Q. Well, on the documents you gave us today, where would that
3 information be?

4 A. That would be culled from some other area of our program or
5 software, such as an Instant Messenger program that may have
6 listed what files were sent out. This file path and property
7 data for the file would not indicate if it was ever sent via
8 e-mail, Instant Messenger, or anything like that.

9 Q. Okay. So the information you gave us this morning does not
10 contain that?

11 A. Right. It does not show that ever.

12 Q. Okay. That's what I was trying to make sure, that I wasn't
13 missing something. But do you have that information?

14 A. Not on this file, because this file didn't have anything.
15 The files that do have that are -- is what's been provided.
16 Like the Instant Messenger chats, that's what I have for
17 Instant Messenger, that's all that's there. The Messenger
18 cache, those images that was part of an Instant Messenger
19 program. That's what I have.

20 Q. Okay. So you don't have any information about any of these
21 pictures being e-mailed, attached to an e-mail?

22 A. Correct, I do not have any, no, sir.

23 Q. Well, are you able to figure that out?

24 A. Yes, sir, it was looked -- the information was not
25 available. It's not there.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. So that either means nobody sent from the computers
2 through e-mail these pictures, or what?

3 A. Or that in the e-mail services that were used are Web-based
4 and the computers don't maintain a lot of the information
5 anymore, as opposed to AOL or Outlook, which in the past you
6 download the program to your computer and it saves that
7 information and saves your library and PST files and stuff to
8 your computer. Web-based e-mails don't do that. They're
9 Web-based. So you end up with Internet caches and stuff, and
10 those are wiped. And so the information could have been there
11 at one time and then wiped over. It's just -- it's hit or miss
12 as to whether or not -- what we're going to recover in that
13 area.

14 Q. All right. So you can't tell the Court whether or not it
15 was e-mailed someplace else, because either it wasn't or that
16 information doesn't exist?

17 A. Correct.

18 Q. Okay. All right. Let's move to -- well, I hope I asked --
19 but you don't have any information that Mr. Barry knew about
20 this picture at the time it was taken, gave permission for his
21 son to be in that picture, or intended for it to be any type of
22 child pornography, correct?

23 A. No, sir.

24 Q. And he was -- you don't have any information that he was
25 even aware that this picture was being taken, right?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Or that he allowed Mr. Noonan to take this picture?

3 A. Correct.

4 Q. Or the other son, if that's who took the picture, correct?

5 MS. ZACK: Your Honor, I'm not objecting, but because
6 this information was asked for and because Special Agent
7 Chappell prepared it and we all have copies of it, I would ask
8 that this be admitted as Government's 30 so it becomes part of
9 the record so that there is some --

10 THE COURT: Any objection?

11 MR. JARVIS: Yes, ma'am. This should have been
12 provided months and months ago. I asked for something just
13 like this. I said make me a list --

14 THE COURT: From what I've been told -- I'm sorry.
15 Make you a list of all of the photographs?

16 MR. JARVIS: Make me a list like this that I have
17 gotten in the past in other child pornography cases, you black
18 out and put a description and then it matches up and then it's
19 something that I can take to my computer guy and compare to
20 what he's found out. But my computer guy can't look at this,
21 because it doesn't have the picture. And I asked for something
22 like this months ago, so --

23 THE COURT: What's your response?

24 MS. ZACK: I would ask that Special Agent Chappell
25 respond to that, because he dealt with all of the evidence

Chappell - Cross by Mr. Jarvis

1 review in this case and he can better attest to that. We have
2 never refused anything to Mr. Jarvis. We have made everything
3 continuously available.

4 *THE COURT:* Okay. I need a response to the question
5 of whether in response to his request for this kind of list
6 there was a decision made -- A, whether you understood that
7 that request was made and if not, what was provided. I
8 understand --

9 *MS. ZACK:* If this specific request was made, I do not
10 recall that request being made.

11 *THE COURT:* All right.

12 *MS. ZACK:* I know that a great many things were
13 requested and everything -- it's my understanding everything
14 that was requested was provided by Special Agent Chappell.
15 This material has been continuously available. His expert had
16 access to this material, was never denied it, came in --

17 *THE COURT:* Okay. This material is really a very
18 broad label. Can you be more specific?

19 *MS. ZACK:* I'm sorry. The creation dates associated
20 with the images associated in Government's Exhibit No. 4.

21 *THE COURT:* Okay.

22 *MS. ZACK:* And the fact that this was Government's
23 Exhibit No. 4 has been made available and what these images
24 were for over a month now, because the notebook has been
25 prepared. They saw it at, I believe, two separate pretrial

Chappell - Cross by Mr. Jarvis

1 conferences and up until yesterday to have this prepared in
2 this manner had never been requested in this way. And we don't
3 deny information to the defense when the information is
4 available.

5 The only issue would have been if depending on
6 how something might be requested, if it is too voluminous or
7 too onerous because of the child pornography. As Your Honor
8 can see, the pictures are provided in this. I couldn't turn
9 this over to him in this format. This could have never been
10 turned over like this because it contains child pornography.
11 So I don't know what was asked for specifically, but if -- this
12 information has all been continuously available and no one came
13 to me -- Mr. Jarvis never came to me and said, "You're not
14 giving me that. Why aren't you giving me this? I'm asking for
15 this information. I've asked Special Agent Chappell for this
16 information. He hasn't given it to me." And none of that, I
17 think, Your Honor, goes to whether or not this is admissible.
18 This information is already contained in --

19 *THE COURT:* You keep saying "this," and it's really
20 very --

21 *MS. ZACK:* I'm sorry. The file path information for
22 each and every picture that we have is already contained in the
23 forensic images of these computers that has already been
24 admitted into evidence. This item is already in evidence. All
25 I'm asking for is that we mark this -- these specific pages to

Chappell - Cross by Mr. Jarvis

1 make a better record.

2 *MR. JARVIS:* And, Judge, I would like to clarify, that
3 Agent Chappell and the U.S. Attorney's Office has been
4 wonderful to work for and have not hidden and I'm not accusing
5 them of that at all. They have always answered our calls and
6 responded. I did send Ms. Zack an e-mail about three weeks
7 ago, I believe, maybe a month ago, asking for the pictures she
8 intends to use with a black mark across the boys' privates,
9 because they sent us some pictures out of Mr. Barry's
10 computers, and they're already in evidence, where she had
11 blacked out their privates and sent those to us.

12 And so I responded by saying, Why don't you do
13 that with all the other pictures, because I can't communicate
14 with my computer expert, because he doesn't have the pictures
15 in front of him. And then to have him have to come to Houston
16 every time to go through all of that is an onerous burden on
17 us, when they've already put black marks across it. That's
18 what I've gotten from U.S. attorneys in the past, is a picture
19 with either a black or description of the picture so my
20 computer guy can look at the picture and say it started here,
21 went to here and went to there. Without the actual picture, he
22 can't do that. So --

23 *THE COURT:* All right. I'm going to -- and I
24 certainly agree that it will be helpful for the record to have
25 this marked and admitted as an exhibit and that way we will all

Chappell - Cross by Mr. Jarvis

1 know what it is we are referring to.

2 I am unclear that your expert has not been able
3 to get all the information that he needs. If he's going to
4 testify, then you can explore that further and we can deal with
5 any holes in his access to information that may exist. I'm not
6 persuaded that there are any. But certainly I agree that this
7 should be marked and admitted as exhibit. What would the
8 number be?

9 MS. ZACK: 30, Your Honor.

10 THE COURT: All right. It's admitted. Thank you.

11 MS. ZACK: Thank you, Your Honor.

12 THE COURT: Go ahead, please. Go ahead, please.

13 MR. JARVIS: Yes, ma'am.

14 BY MR. JARVIS:

15 Q. Let's go to 4u, I believe is our next one.

16 A. Yes, sir.

17 Q. Now, this is the picture probably either right before or
18 right after the picture before it. Would that be a fair
19 statement --

20 A. Yes, sir.

21 Q. -- the boy and the dog?

22 A. Correct.

23 Q. Okay. And it certainly looks like this was taken by
24 someone who isn't good with cameras apparently or good enough
25 to get the boy and the dog in the frame, right?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. And, again, the angle suggests that it was the other
3 brother that took the picture, correct?

4 A. It's possible, yes, sir.

5 Q. Or I guess the timer could have taken this one, right?

6 A. Possible, yes, sir.

7 Q. And while the boy's genitalia is showing, it doesn't look
8 like it's any kind of sexual pose, does it?

9 A. No, sir.

10 Q. Was that a "no"? I'm sorry.

11 A. No, sir.

12 Q. Thank you. And the boy is smiling and it looks like he's
13 just kind of laying down on the dog, right?

14 A. Correct. Yes, sir.

15 Q. Okay. So there wouldn't be anything in this being child
16 pornography, would there?

17 A. I still view it as -- my opinion, it's still child
18 pornography, sir. It's still a nude child whose penis is
19 clearly visible. It's -- again, he's laying against the dog.
20 It's not necessarily a sexual pose, but it could still elicit
21 depending on the viewer and what they want to see out of the
22 picture.

23 Q. Well, that's -- so, in your opinion, based on this picture,
24 any nude photograph showing the little boy's penis is going to
25 be child pornography?

Chappell - Cross by Mr. Jarvis

1 A. It's possible, yes, sir, depending on the person looking at
2 the picture, yes, sir.

3 Q. Well, if that's the case, then why aren't pictures of
4 clowns considered child pornography? Because it depends on
5 whether or not the viewer has a fetish for clowns, right?

6 A. Is the clown nude? And the child, are their genitalia
7 showing? That's part of it as well. And in this case his
8 genitalia is clearly visible.

9 Q. But my question is, though, if your definition of it is
10 whatever turns on the viewer, whether it's nude sexual poses,
11 provocative clothes or a clown suit?

12 A. No, sir, that's not what I said. I said that's part of the
13 viewer looking at it. And, in my opinion, looking at this
14 picture, it is being able to see his genitalia, laid across the
15 bed with the dog, to me it's -- in my opinion, it's child
16 pornography.

17 Q. And you understand that mere nudity is not sufficient. You
18 have a right to be naked, don't you?

19 MS. ZACK: Objection.

20 THE COURT: I'm going to sustain the objection to the
21 way the question is phrased.

22 BY MR. JARVIS:

23 Q. Well, there's no evidence that Mr. Barry knew this picture
24 was taken, correct?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Or that he instructed or induced or told somebody to take
2 that picture, correct?

3 A. No, sir.

4 Q. And there's no evidence that he intended for it to be child
5 pornography when it was taken, right?

6 A. No, sir.

7 Q. Or at any other time, correct?

8 A. Yes, sir.

9 Q. Okay. We don't even know if Mr. Noonan was available or
10 took that picture, right?

11 A. No, sir.

12 Q. And there's no evidence on any of the pictures I've talked
13 about so far that Mr. Noonan or Mr. Barry conspired or
14 discussed or made some type -- any type of agreement that
15 you're aware of to take these pictures, correct?

16 MS. ZACK: Objection. Calls for a legal conclusion.

17 THE COURT: Sustained.

18 BY MR. JARVIS:

19 Q. Do you have any evidence suggesting that?

20 MS. ZACK: Objection. Again, calls for a legal
21 conclusion.

22 THE COURT: Does he have any evidence suggesting that.
23 I'm going to allow that question.

24 A. Suggesting?

25 BY MR. JARVIS:

Chappell - Cross by Mr. Jarvis

1 Q. That they made some type of agreement to create these
2 pictures?

3 A. No, sir.

4 Q. Okay. All right. Then 4v, this is the backyard swimming
5 pool, barbecue pictures. This is Craig Noonan, unknown child,
6 and the two, O.B. and R.B., correct?

7 A. Correct.

8 Q. Now, other than the mere nudity, Mr. Noonan's hands are not
9 in an inappropriate position, are they?

10 A. Inappropriate, yes, sir. Again, they're all nude. Three
11 nude children that are not related to him. He has his arm
12 around one, holding him. The third child on the far left is
13 leaning against Mr. Noonan and is touching and holding his own
14 penis.

15 Q. Okay. But let's go to Mr. Noonan. He's got one arm
16 wrapped around the bicep of a child. And one -- excuse me,
17 hand around the bicep and a hand around the thigh of the
18 child -- of the other child. Looks pretty far away from any
19 closeness to his penis. So what would be sexual about a man's
20 hand on a bicep and a thigh?

21 A. Well, you said inappropriate. I was responding. It's
22 they're nude. He's not related to these children. They're all
23 together and he has his arm around one, across his chest and
24 arms, and the other child is resting his buttocks on his arm.
25 To me that is inappropriate.

Chappell - Cross by Mr. Jarvis

1 Q. But those wouldn't be an unnatural pose for taking a
2 picture, correct?

3 A. Those three, no, sir.

4 Q. Okay. I mean, this could have been a picture taken at a
5 nudist resort and that would be legal, couldn't it?

6 A. Possibly, yes, sir.

7 Q. So if it's in somebody's private backyard, why is it
8 illegal?

9 MS. ZACK: Objection. Calls for a legal conclusion.

10 THE COURT: Sustained.

11 BY MR. JARVIS:

12 Q. Well, there's no sexual coyness or suggestion by anybody,
13 right?

14 A. The child on the left is touching his penis.

15 Q. Does he appear to be doing anything other than just have
16 his hand there? I mean, he's not holding it or masturbating or
17 simulating masturbation, correct?

18 MS. ZACK: Objection. Calls for speculation. This is
19 a still photograph.

20 THE COURT: If he can tell. If he can tell.

21 A. It's a still photograph. I wouldn't be able to tell if
22 there's any motion or not. The hand -- but the hand is on his
23 penis, and it looks like he's touching it more than just his
24 hand resting there. His fingers appear to be curved around it.

25 BY MR. JARVIS:

Chappell - Cross by Mr. Jarvis

1 Q. All right. You don't have any information that Mr. Barry
2 knew about this picture or gave permission for it, correct?

3 A. No, sir.

4 Q. Or that he intended for it to be child pornography,
5 correct?

6 A. No, sir.

7 Q. Or that he agreed with Mr. Noonan that he could or somebody
8 could take the picture? Obviously Mr. Noonan didn't, right?

9 A. Right, Mr. Noonan agreed, yes, sir.

10 Q. Okay. But you don't have any information that Mr. Barry
11 agreed with Mr. Noonan?

12 A. No, sir.

13 Q. Okay. Then that one, though, it shows on the -- I guess
14 the Government's Exhibit 30 brought today, this one and the
15 next one are created June 1st, 2010, correct?

16 A. This one actually has two created dates, because it was in
17 two separate locations, 4v, that we're talking about. And
18 then, yes, 4w was June 1st as well. It actually has two
19 created dates.

20 Q. All right. Let me make sure I understand this. 4v which
21 is the first one of these two?

22 A. Correct.

23 Q. But it certainly looks like they're the same in a series.
24 Would that be a fair statement?

25 A. It's the same picture, yes, sir. If you look at 4v, the

Chappell - Cross by Mr. Jarvis

1 very next entry isn't 4w. It's the same picture, because it's
2 created in a different folder. So I put both create dates
3 there.

4 Q. I'm sorry. I'm looking at the actual pictures, not your
5 deal.

6 A. Oh, okay.

7 Q. But 4v and 4w in the notebook are the same in a series, one
8 right after another?

9 A. Yes, sir. Correct.

10 Q. Okay. But on 4v, we've got a created 6-1 and then again on
11 6-18, correct?

12 A. Correct.

13 Q. So how does it get created twice?

14 A. It was copied or moved to a different folder.

15 Q. So it was in the created "Craig Houston" folder first,
16 correct?

17 A. Yes, sir.

18 Q. Because it was created on 6-1-2010, right?

19 A. Correct, with a different file name.

20 Q. Okay. And then somebody created it again on June 18th,
21 2010, with another file name, "David and the boys," right?

22 A. Correct. In a different folder, yes, sir.

23 Q. Okay. Did you see that occur in other pictures?

24 A. Yes, sir. The ones in 4a that we're reviewing now, the
25 ones that are that way have been listed this document, in

Chappell - Cross by Mr. Jarvis

1 Exhibit 30.

2 Q. So somebody had to take the picture before June 1st, either
3 on or before June 1st, right, on v?

4 A. Correct.

5 Q. And then they took from the camera to a computer -- do you
6 know which computer it went to?

7 A. Well, this was created on Mr. Barry's computer on June 1st.

8 Q. Okay. So somebody took it from the camera June 1st or
9 before and put it on Mr. Barry's computer?

10 A. On -- put it on Mr. Barry's computer on June 1st, yes, sir.

11 Q. Right. I'm with you.

12 A. Correct.

13 Q. All right. And then somebody took it from either
14 Mr. Barry's computer or the camera and put it on Mr. Noonan's
15 computer on 6-18?

16 A. No, sir. This is Mr. Barry's computer both times.

17 Q. Well, why would somebody put the same picture on there both
18 times?

19 MS. ZACK: Objection. Calls for speculation.

20 THE COURT: Sustained.

21 BY MR. JARVIS:

22 Q. So is this picture anywhere on Mr. Noonan's computer?

23 A. No, sir.

24 Q. That you could find?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. So what camera was it taken with?

2 A. Mr. Noonan's.

3 Q. So Mr. Noonan's camera is made -- makes the pictures, but
4 it never makes it to Mr. Noonan's computer?

5 A. It wasn't on his computer, no, sir.

6 Q. Was that because it never got there or you just didn't find
7 it?

8 MS. ZACK: Objection. Calls for speculation.

9 THE COURT: If he knows.

10 A. I don't know if it ever made it on there, because there's
11 no evidence. It was not in an allocated. So, I don't know if
12 it was overwritten or if he just never downloaded that
13 particular photograph to his computer.

14 BY MR. JARVIS:

15 Q. So it's a 50/50 shot either way?

16 A. Either way, yes, sir.

17 Q. Okay. Well, and then the same questions for 4w, which is
18 the -- in your list, the second in the series of the pool
19 pictures, right?

20 A. Yes, sir.

21 Q. Would your answers be the same of the questions already
22 asked?

23 A. Yes, sir.

24 Q. Okay. Then 4x, this is Mr. Noonan and one of the boys,
25 correct?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. And you can barely see the boy's penis there on the almost
3 far left side, correct?

4 A. That is correct.

5 Q. And the expression on their faces doesn't seem to be very
6 sexual, does it?

7 A. No, sir.

8 Q. It's kind of, I guess, sticking their tongue out or doing a
9 raspberry at whoever is doing the camera, right?

10 A. Correct. Yes, sir.

11 Q. So that wouldn't be considered a sexual focus or pose,
12 would it?

13 A. No, sir.

14 Q. And then the Buzz Lightyear doll is in there. The same one
15 that you say we see in the other pictures, correct?

16 A. Correct.

17 Q. And other than -- and you can't even tell, I guess, what
18 the setting is on this one, whether it's in the bedroom or den
19 or anyplace, can you?

20 A. No, sir.

21 Q. So there's no sexually suggestive setting. It's not an
22 unnatural pose, no sexual coyness, and then you have -- the
23 focal point, where would be the focal point be? The faces?

24 A. It could be. It's one possibility, yes, sir.

25 Q. And, again, it looks like it was taken at the angle that

Chappell - Cross by Mr. Jarvis

1 suggests one of the other brothers took the picture, correct?

2 A. It's possible, yes, sir.

3 Q. Or maybe a timer, right?

4 A. Possible, yes, sir.

5 Q. And you don't have any evidence that Mr. Barry knew this
6 was being taken at the time it was taken, correct?

7 A. That is correct.

8 Q. Or that he agreed with Mr. Noonan to allow him to take this
9 picture or to have one of the boys take the picture, right?

10 A. That is correct.

11 Q. And there's no information that you have saying that he
12 told the boys to take the picture, correct?

13 A. That is correct.

14 Q. Or that he induced them or coerced them or in any way,
15 encouraged them to take any of these pictures, right?

16 A. Correct.

17 Q. Okay. And then moving to 4y -- in Government's Exhibit 30,
18 you have a 4y?

19 A. Yes, sir.

20 Q. But on the list provided to us, there's not a y. It goes
21 w, x, z on the amended exhibit list. Maybe I have the one
22 before.

23 MS. ZACK: You're confusing it with Government's
24 Exhibit 6a, which contains the EXIF data. We don't have EXIF
25 data for all of those pictures. And so if you look at the --

Chappell - Cross by Mr. Jarvis

1 MR. JARVIS: See if you can find the page. I'm sorry.

2 *(Mr. Jarvis and Ms. Minick conferring.)*

3 MS. ZACK: That's the wrong version. The one in your
4 notebook has --

5 MS. MINICK: You said that yesterday.

6 MS. ZACK: No, that's in 6. In 4 there absolutely is
7 a y.

8 MR. JARVIS: Okay.

9 BY MR. JARVIS:

10 Q. All right. So this picture is Mr. Noonan and one of the
11 boys laying on his lap faced towards the camera, correct?

12 A. That's correct.

13 Q. And that was created on 9-16-2010, right?

14 A. That is correct.

15 Q. Now, you can see the boy's penis barely off to the right,
16 correct?

17 A. Yes, sir.

18 Q. And it looks like Mr. Noonan is smiling, if you can call
19 that a smile, right?

20 A. Yes, sir.

21 Q. So there's no sexual coyness by the child or Mr. Noonan
22 that I can see. Would you agree with that?

23 A. For the child, I -- to me there is. An expression on his
24 face, the way he's laying, it's a little more suggestive to me,
25 yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Well, it's just laying on his lap. That wouldn't be an
2 unnatural pose for a child, to lay on a grownup's lap, correct?

3 A. An adult male not related to him, appears to be nude, the
4 child is nude, yes, sir, to me that's unnatural.

5 Q. But if they have clothes on, it wouldn't be unnatural.
6 Would that be a fair statement?

7 A. It would be less unnatural, but it's still, again, not
8 related to the child. Laying like that would still be
9 unnatural to me, just not as unnatural as this.

10 Q. And the focal point I'm assuming is Mr. Noonan or maybe the
11 face of the boy, because the camera isn't directed towards the
12 private parts of the child, correct?

13 A. Yeah, Mr. Noonan's centered on it, but given where the
14 child's head is at and being able to see his penis, it quickly
15 because the focal point in this picture.

16 Q. In your opinion?

17 A. Yes, sir.

18 Q. Okay. But there's no information that you have that it was
19 intended or designed to elicit a sexual response when it was
20 taken, correct?

21 A. No, sir.

22 Q. And there's no information that you have that Mr. Barry
23 knew about this picture when it was being taken?

24 A. No, sir.

25 Q. And that he agreed to allow Mr. Noonan to be in this

Chappell - Cross by Mr. Jarvis

1 picture with this child -- his child, right?

2 A. That is correct.

3 Q. Or that he intended it to be child pornography at any time,
4 correct?

5 A. That is correct.

6 Q. And there's no information that he was even around when
7 this picture was taken, as far as being in the room and seeing
8 it being taken?

9 A. That is correct.

10 Q. Okay. And, again, the angle is such that it looks like
11 it's probable the other boy took the picture?

12 A. It's possible, yes, sir.

13 Q. Okay. Now, this one, though, was created 9-16 --

14 A. Correct.

15 Q. -- at 11:38 p.m. And that's when it was put on somebody's
16 computer, right?

17 A. Yes, sir.

18 Q. Mr. Barry's computer?

19 A. Correct.

20 Q. And it was taken with Mr. Noonan's camera?

21 A. I do not know, sir.

22 Q. How do we not know that?

23 A. Because there's no EXIF data. This is a recovered image
24 from Messenger cache.

25 Q. Okay. But didn't you check Mr. Noonan's camera and find

Chappell - Cross by Mr. Jarvis

1 his remnants of the pictures taken on his camera?

2 A. Some were there and some weren't.

3 Q. So your -- I'm not trying to be mean, but I just want to
4 make sure I understand. Your forensic analysis is more of a
5 science -- I mean, an art than an exact science, because you're
6 not able to recover everything, are you?

7 MS. ZACK: Objection.

8 THE COURT: What's the objection?

9 MS. ZACK: It's to the characterization that it's not
10 a science.

11 THE COURT: He's an expert on computer forensics. I
12 think he can answer the question, if it can be answered. If it
13 can't, he can say that too.

14 THE WITNESS: Yes, ma'am.

15 A. It is a science. Obviously not everything is recoverable
16 due to factors that are beyond control of the forensic analysts
17 due to files being overwritten, files not being loaded on a
18 particular computer or media. There's any myriad of different
19 reasons why a file cannot be or is not recovered.

20 BY MR. JARVIS:

21 Q. And I'm not disparaging you or your techniques. I'm just
22 saying you're right, because of all those other factors, it's
23 not a math equation where two plus two is going to equal four
24 every time. You go in and you have to piece it together using
25 the tools you have and sometimes you're successful in getting

Chappell - Cross by Mr. Jarvis

1 everything and sometimes you're not. And that's not anybody's
2 fault. That's just the way it is, right?

3 A. Correct.

4 Q. Okay. So it's not an ironclad proof that it was either not
5 on there or on there if you find it or don't find it, because
6 there's a lot of variables that means that just because you say
7 it's not on there doesn't mean it wasn't ever on there at one
8 time?

9 A. That is correct.

10 Q. All right. And the vice versa is true. These are not
11 completely accurate because you can't get to everything
12 sometimes, right?

13 A. I don't understand. Not accurate in what way?

14 Q. Well, if you can't tell us when it was made through the
15 camera or when it was put on or if it was on Mr. Noonan's
16 computer, then that leaves a gaping hole on how it got into
17 Mr. Barry's computer, right, through no fault of your own?

18 A. No, you're correct, I cannot answer how it got onto
19 Mr. Barry's computer. I can only show that it was on
20 Mr. Barry's computer and it was created in the Messenger cache.

21 Q. So one explanation is somebody e-mailed it to him or
22 messengered it to him, right?

23 A. Possibly, yes, sir.

24 Q. Another explanation is that somebody could have put it on a
25 disk and put it in his computer?

Chappell - Cross by Mr. Jarvis

1 A. That is highly improbable with the Messenger cache. It's
2 either he sent it or he received it.

3 Q. Okay. For him to have sent it to somebody, he would have
4 to have it on his computer first?

5 A. Or some media attached to his computer.

6 Q. Okay. A part of his computer. He would have to have it,
7 possess it, and then send it, right?

8 A. Correct.

9 Q. Okay. And you don't have any evidence of that, though, for
10 this picture?

11 A. Correct.

12 Q. So you can't tell us if it was ever on his -- what I call
13 the main part of his computer, not the Messenger part. Is that
14 fair?

15 A. I don't have information as to where this file resided
16 outside of the Messenger cache. I only know it only resides in
17 the Messenger cache at that date and time.

18 Q. Okay. All right. Well, let's go to the next picture. All
19 right. These are the -- is this one of the O.B. or R.B.'s?
20 Can you tell, 4z?

21 A. I'm not sure which. I just know it's one of the Barry
22 children.

23 Q. Okay. And he appears to be nude. But it's really hard to
24 tell in this picture, isn't it?

25 A. In this picture it is. The -- because it's a digital

Chappell - Cross by Mr. Jarvis

1 graphics, it actually -- the actual image itself appears better
2 on a computer when you see it natively. So, in that case you
3 can tell. This is obviously a printed copy, so it's not as
4 clear.

5 Q. Okay. But there's nobody else in the picture but the boy,
6 right?

7 A. No, sir, just the boy.

8 Q. And it looks like it's at the same angle that would suggest
9 that the other brother took the picture?

10 A. Possible, yes, sir.

11 Q. Or a timer even?

12 A. Possible, yes, sir.

13 Q. And I can't tell from the face, but it doesn't look like
14 there's any sexual coyness. He's just standing there having
15 his picture taken?

16 A. Correct.

17 Q. He's not actually doing anything, just standing there,
18 right?

19 A. Correct.

20 Q. Just a naked little boy, right?

21 A. Correct.

22 Q. So it's not an unnatural pose. It's not an unnatural
23 setting. There's no sexual coyness, correct?

24 A. Correct.

25 Q. So other than the nudity, there's nothing there to say it

Chappell - Cross by Mr. Jarvis

1 should be considered child pornography, right?

2 A. Correct.

3 Q. And yet you still have it in there as child pornography?

4 A. Yes, sir.

5 Q. So -- okay. And there's nothing to suggest and you don't
6 have any evidence that David Barry knew this picture was being
7 taken, encouraged it, enticed the child, or anything along that
8 nature, correct?

9 A. Correct.

10 Q. Or that he conspired with Mr. Noonan to have this picture
11 taken?

12 A. Correct.

13 Q. Or that he, Mr. Barry, intended for this to be child
14 pornography at the time it was taken?

15 A. Correct.

16 Q. Okay. Then we have the unknowns, 4aa, bb, cc, dd, ee, ff,
17 gg. And ff and gg are duplicates, right?

18 A. Correct.

19 Q. Okay. So there's really only six?

20 A. Correct.

21 Q. All right. And then looking at aa, when was that created?

22 A. On 11-20 of 2010.

23 Q. And were all these created on 11-20, 2010?

24 A. No, sir.

25 Q. No?

Chappell - Cross by Mr. Jarvis

1 A. No, sir.

2 Q. Okay. So they were put on Mr. Barry's computer two
3 different times? Is that what that means?

4 A. One, two -- on two different dates.

5 Q. 12-18-2010 and 11-20-2010; is that correct?

6 A. That is correct.

7 Q. And somebody, it looks like, sent that to him, correct?

8 A. That's one possibility.

9 Q. All right. And it doesn't show from what you gave us today
10 on Government's Exhibit 30 that they were opened up, correct?

11 A. What are you referring to? I'm not --

12 Q. Your Government's Exhibit 30.

13 A. Correct.

14 Q. All right. And they weren't obviously not saved to
15 Mr. Barry's computer? You didn't find any evidence of that?

16 A. They're saved in a different location?

17 Q. Yes, sir.

18 A. No, sir, I didn't have any evidence of that.

19 Q. So these were all in his Messenger cache and not saved,
20 right?

21 A. They were saved to -- I mean, they were saved on his
22 Messenger cache. If you're asking if they were saved to a
23 different location, no, sir, I don't have any evidence of that.

24 Q. All right. So they're saved automatically in the Messenger
25 cache?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. If they go, they stay. But in order to keep them on your
3 computer and put them some place, you would create a file or a
4 folder and you would save them to that file and folder so you
5 can look at them again, right?

6 A. Correct.

7 Q. And, in fact, I think in the other part of your -- of the
8 Government's exhibit, it says these were carved. Doesn't that
9 mean deleted?

10 A. No, sir, carved does not mean deleted. Carved means that
11 they were extracted -- you can carve from any number of
12 different types of files. A database file, unallocated, which
13 means they're deleted. You can carve from any number of system
14 files, system volume information. Carving just means
15 extracting a file.

16 Q. What does extracting mean?

17 A. The extracting means pulling the file out. In this case
18 this was carved from the Messenger cache. It's not a deleted
19 file. It resided in allocated space on the Messenger cache.
20 Does that make sense? It's not a deleted file.

21 Q. Well, because I thought I asked you yesterday -- I know I
22 asked you yesterday if the carved meant deleted, and you said
23 yes yesterday.

24 A. It can, yes, sir. Carve can be deleted. In this case it
25 does not.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. So these are on -- in his Messenger cache some
2 place?

3 A. Yes, sir.

4 Q. But you don't have any information that Mr. Barry ever
5 looked at these, do you?

6 A. The probability is very high they have to, because they
7 would have appeared on his computer on his screen in order for
8 them to be in the Messenger cache.

9 Q. Don't they automatically appear? You can't stop that?

10 A. If you're using Windows Messenger, yes. If Windows
11 Messenger is turned off and you're not using it, then, no, it's
12 not going to appear.

13 Q. But when you turn it back on and all the messages just pop
14 up and you look at them and go, ooh, I didn't order that?

15 A. That's possible, yes, sir.

16 Q. Okay. So it's possible that he either didn't see them or
17 saw them and immediately said, "Those aren't for me" and got
18 rid of them, right?

19 A. I don't know, sir, I wasn't there. That's possible.

20 Q. Okay. Now, looking at all these pictures together,
21 especially dd and ee, these look like similar pictures to what
22 we've already seen, correct, in the sense of nudity and nudists
23 and a naked man and a naked boy?

24 MS. ZACK: Objection, Your Honor.

25 THE COURT: I don't think that there's a question yet,

Chappell - Cross by Mr. Jarvis

1 unless I missed it. What is the question?

2 BY MR. JARVIS:

3 Q. Are these, in your opinion, similar to the ones we've
4 already gone over that were in the other parts of Mr. Barry's
5 computer?

6 A. In some ways, yes, sir.

7 Q. Okay. Because it could just as easily be another nudist
8 father and son, couldn't it?

9 MS. ZACK: Objection. Calls for speculation.

10 THE COURT: I'll sustain that objection.

11 BY MR. JARVIS:

12 Q. Well, in dd and ee -- well, actually in all of them,
13 there's no sexual stimulation or simulation in any of these
14 pictures, is there?

15 A. Simulation --

16 Q. Yeah.

17 A. -- or stimulation?

18 Q. Both, either or neither.

19 A. In any of these pictures?

20 Q. In the six.

21 A. Correct. If you look at 4aa, the child obviously has an
22 erect penis laying in the bathtub.

23 Q. I grant you that, but there's no picture of anybody
24 simulating sex other than a little boy with an erect penis?

25 A. That's correct.

Chappell - Cross by Mr. Jarvis

1 Q. And the males in -- or the male in the three pictures, he
2 doesn't have an erect penis, correct?

3 A. Correct.

4 Q. And with the exception of one of them being outside,
5 they're very similar poses to the other pictures that we've
6 already talked about. We've got cc where the boy's on an
7 exercise bike. We've got the O.B. and R.B. doing Wii
8 exercises, correct?

9 A. Yes, sir.

10 Q. So other than the different people, different faces,
11 they're of a similar type. Would that be a fair statement,
12 similar vein?

13 A. Yes, sir.

14 Q. Okay. And then looking at ee, this is where the man and
15 the boy are outside. He's got his shoes on, and it looks like
16 they're sticking their tongue out at the camera or at least the
17 boy is, right?

18 A. Correct.

19 Q. And you don't have any evidence that Mr. Barry produced
20 these or allowed them to be produced, correct?

21 A. No, sir.

22 Q. All right. Or in any way participated in the production,
23 correct?

24 A. That is correct.

25 Q. And you don't know who these people are, do you?

Chappell - Cross by Mr. Jarvis

1 A. I have no idea, no, sir.

2 Q. Okay. And those were under "Craig Houston"? No, those
3 were just in the Messenger cache.

4 All right. Going to 4hh, this is again
5 Mr. Noonan and one of the Barry boys. This is where his --
6 well, there's a laundry basket at the bottom, correct?

7 A. Yes, sir.

8 Q. And it looks like clothes down at the floor or something at
9 the feet?

10 A. Some sort of material.

11 Q. All right. Now, except for the left toe or feet of the boy
12 that is near the groin area, the boy's penis is not showing,
13 correct?

14 A. Correct.

15 Q. And Mr. Noonan is just smiling at the camera, right?

16 A. Correct.

17 Q. The boy's smiling?

18 A. Correct.

19 Q. And as you've testified before, would this be an unnatural
20 pose if they had clothes on?

21 A. It would be less unnatural, but -- if they had clothes on,
22 yes, sir.

23 Q. Well, does it appear that it's just like the boy is
24 crawling over him?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. Like little monkeys, like little boys do?

2 A. Correct.

3 Q. Okay. And that would be natural for a boy to do, correct?

4 A. Yes, sir.

5 Q. So the fact that they don't have clothes on makes it
6 unnatural, in your opinion?

7 A. In this particular case, that's a big factor in it, yes,
8 sir.

9 Q. Okay. But there's not any sexually suggestive setting,
10 right?

11 A. No, sir.

12 Q. And the focal point is certainly not on the boy's
13 genitalia. It looks like it's more on Mr. Noonan's face. But
14 again I guess that's up to the viewer, right?

15 A. Correct.

16 Q. And you don't have any evidence that Mr. Barry knew this
17 picture was taken being, correct?

18 A. No, sir.

19 Q. And you don't have any evidence that he conspired with
20 Mr. Noonan to allow this picture to be taken?

21 A. Correct.

22 Q. Or even made any type of agreement?

23 A. Correct.

24 Q. And you have no evidence that Mr. Barry was even in the
25 room when this picture was being taken?

Chappell - Cross by Mr. Jarvis

1 A. That is correct.

2 Q. You don't have any evidence that Mr. Barry enticed or
3 allowed or coerced the boys to either take or to be in the
4 pictures, right?

5 A. Correct.

6 Q. Okay. The next one is 4ii. Mr. Noonan is -- looks like
7 got the boy's foot up next to his mouth, right? Is that
8 correct?

9 A. Correct. Yes, sir.

10 Q. Oh, I'm sorry. You're looking at the screen.

11 A. Yes, sir.

12 Q. And that one's kind of blurry as if they were moving?

13 A. Or the camera was moving is a possibility.

14 Q. Okay. But, again, the angle is such that it looks like the
15 other brother took it?

16 A. Possible, yes, sir.

17 Q. And the genitalia is visible, but Mr. Noonan doesn't have
18 an erect penis, correct?

19 A. It's semierect, yes, sir.

20 Q. Okay. But the boy is just -- looks like he's rolled over
21 from one of the previous pictures, right?

22 A. He's rolled over, yes, sir.

23 Q. I mean, it's on the couch. You've got the same laundry
24 basket and the same cloths down at the bottom. So it appears
25 that these were in some series. Do you have them numerically

Chappell - Cross by Mr. Jarvis

1 listed?

2 A. Yes, sir. They're within two numbers of each other on
3 their file paths, so, yes, sir.

4 Q. So a couple of seconds?

5 A. It could be several minutes. But they're -- as far as the
6 file listing goes, they're within the same series, yes, sir.

7 Q. Okay. And, again, it's just on the couch, so that's not a
8 sexually suggestive setting, correct?

9 A. The couch in and of itself, no, sir.

10 Q. And it's not an unnatural pose for a child this age to be
11 laying on his back?

12 A. In this position without any clothes on and his legs
13 spread, yes, sir, to me it's not a natural position.

14 Q. But if he had his clothes on it wouldn't be unnatural?

15 A. If he had his clothes on, then probably not, no, sir.

16 Q. And you have no information that Mr. Barry knew about this,
17 participated in it, agreed to it, enticed any of the children
18 to participate into it or forced them or coerced them or had
19 any intent to make this a child pornography picture, correct?

20 A. No, sir.

21 Q. Okay. Let's look at the pictures -- Government's Exhibit
22 No. 5, why is this one separate?

23 *MS. ZACK:* Objection. Relevance.

24 *THE COURT:* I'll sustain the objection. It also seems
25 to call for speculation, if you're asking why it was retrieved

Chappell - Cross by Mr. Jarvis

1 in a separate way.

2 BY MR. JARVIS:

3 Q. Well, it was found in Mr. Barry's computer, correct?

4 A. Correct.

5 Q. And the file date, that wasn't provided today. When was it
6 created?

7 A. I would have to go back and look at it, sir, and see
8 exactly when it was created.

9 Q. Is this the only picture in this bed? Is that why it's not
10 with the rest of them?

11 MS. ZACK: Objection. Relevance.

12 THE COURT: Relevance? I think the more difficult
13 point is that how would he know why it was filed in a
14 particular place in the computer. Is that what you're asking?
15 Perhaps I'm misunderstanding.

16 MR. JARVIS: Yes, ma'am. I'm asking why it was
17 separated from all of 3 and 4, if it's out of Mr. Noonan's,
18 unless he can tell me it's in a separate folder.

19 THE COURT: Are you asking if the witness separated it
20 in the course of sorting through the evidence? Is that what
21 you're asking?

22 MR. JARVIS: Yes, ma'am.

23 THE COURT: All right. Ask that question.

24 BY MR. JARVIS:

25 Q. Okay. Well, did you separate this from the other exhibits,

Chappell - Cross by Mr. Jarvis

1 the pictures in 4 and 3, as you were going through the
2 exhibits?

3 *MS. ZACK:* Objection, Your Honor. As I'm
4 understanding this, he's asking this witness why I created the
5 Government's evidence.

6 *THE COURT:* No, no, not you. This witness, if he did.
7 If he did.

8 *MS. ZACK:* Okay.

9 *THE COURT:* If he didn't, then he'll say so.

10 A. From the collection of images and stuff, no, sir, I did not
11 separate this from those images.

12 BY MR. JARVIS:

13 Q. And was this found on Mr. Barry's computer or in the
14 Messenger cache?

15 A. Which is on Mr. Barry's computer though. But, no, this was
16 found on -- it was found in Mr. Barry's computer within his
17 folders.

18 Q. Which folder?

19 A. I would have to go and pull up the actual file to tell you
20 exactly where. But it came from either "Craig Houston," "Craig
21 H," or "David and the boys" and those subfolders.

22 Q. But you don't know when this was taken?

23 A. Not at the moment, no, sir.

24 Q. And you don't know -- you don't have any information that
25 who took the picture?

Chappell - Cross by Mr. Jarvis

1 A. Other than it's not Mr. Noonan or the two children.

2 Q. Well, it could have been the timer, right?

3 MS. ZACK: Objection. Calls for speculation.

4 THE COURT: Sustained.

5 BY MR. JARVIS:

6 Q. What about another person other than Mr. Barry being there
7 to take the picture, is that possible?

8 A. It is possible, yes, sir.

9 Q. And were you aware that Mr. Noonan's family showed up
10 during Christmastime and New Year's?

11 A. No, sir.

12 Q. Mom, brother, sister, up from upstate showed up, were you
13 aware of that?

14 MS. ZACK: Objection. Asked and answered.

15 THE COURT: Sustained.

16 BY MR. JARVIS:

17 Q. So it's possible that somebody else could have taken this
18 picture other than Mr. Barry, correct?

19 MS. ZACK: Objection. Asked and answered.

20 THE COURT: I'll sustain the objection.

21 BY MR. JARVIS:

22 Q. Do you have any evidence that Mr. Barry knew this picture
23 was being taken?

24 A. No, sir.

25 Q. Do you have any evidence that he agreed to allow it to be

Chappell - Cross by Mr. Jarvis

1 taken?

2 A. No, sir.

3 Q. Any evidence that Mr. Barry posed the children to be in
4 this picture?

5 A. No, sir.

6 Q. Any evidence that he agreed with Mr. Noonan to allow him to
7 be photographed with his boys?

8 A. Can you repeat that again, sir? Sorry.

9 Q. Any information that Mr. Barry allowed Mr. Noonan to be
10 photographed with his boys?

11 A. We do have evidence that Mr. Barry has -- allows Mr. Noonan
12 to be photographed with the children, because we have pictures
13 with Mr. Barry in photographs with the children.

14 Q. But for this photo and all these other photos, separating
15 them out, you don't have any information that Mr. Barry agreed
16 to that photo, other than the one they're all four in, right?

17 A. That is correct, yes, sir.

18 Q. Okay. And in this one, there's no nudity at all?

19 A. No, sir.

20 Q. So would this be considered child pornography under your
21 definitions?

22 A. No, sir.

23 Q. Okay. Then why is it in here?

24 MS. ZACK: Objection.

25 THE COURT: Sustained.

Chappell - Cross by Mr. Jarvis

1 BY MR. JARVIS:

2 Q. All right. Going to 9, how many of these pictures are
3 different than the pictures we already covered in 3 and 4?

4 Looks like the majority of them, correct? I'm sorry. I'll
5 wait until you get your notebook ready.

6 A. I don't have the evidence list here to see what was in 9.
7 Thank you. Now, the selected, are you talking about 9a through
8 9k?

9 Q. Yes, sir.

10 A. Okay. Yes, these would be -- these selected photographs
11 are different from the ones we've already gone through.

12 Q. Okay. Well, let's go through these. 9a is the picture of
13 Mr. Noonan and Mr. Barry and one of the boys either handing or
14 getting the camera, correct?

15 A. That is correct.

16 Q. So there wouldn't be any child pornography in this
17 photograph, right?

18 A. The -- of the children nude? No, sir. But children are
19 present within the photograph.

20 Q. An arm?

21 A. That's a child's arm.

22 Q. Is that a sexually suggestive pose for the child?

23 A. For the child, no, sir.

24 Q. Well, how would you consider this to be child pornography
25 if the only thing of the child is the arm?

Chappell - Cross by Mr. Jarvis

1 A. The children present during what I consider to here are two
2 males in close proximity and showing an intimacy that are nude
3 with their exposed genitalia could be viewed that way.

4 Q. Well, explain to me if these are two gay men, why that is
5 somehow wrong for them to be sitting around naked and --

6 MS. ZACK: Objection.

7 MR. JARVIS: I'm sorry. Go ahead.

8 MS. ZACK: Go ahead, finish --

9 THE COURT: He's not finished his question. Go ahead.

10 BY MR. JARVIS:

11 Q. Explain to me how that's somehow wrong if they're gay and
12 nude and there's an arm of a child?

13 MS. ZACK: Objection. Calls for speculation. There's
14 no evidence of Mr. Noonan's sexual orientation that's been
15 brought forward at this point, and he's asking him to speculate
16 about a hypothetical situation that is not this photograph.

17 THE COURT: I'll sustain the objection. Although I
18 think it's more -- I don't think the issue is whether this is
19 right or wrong. The question is whether there is -- I don't
20 hear you objecting to the relevance of the photograph, and
21 therefore I'm not sure that your question makes sense.

22 MR. JARVIS: Yes, ma'am.

23 THE COURT: So can you rephrase it?

24 MR. JARVIS: Yes, ma'am.

25 BY MR. JARVIS:

Chappell - Cross by Mr. Jarvis

1 Q. Explain to me again how you can say this is some type of
2 child pornography merely because it's two naked men with
3 nonerect penises?

4 MS. ZACK: Objection, Your Honor. It calls for a
5 legal conclusion.

6 THE COURT: Overruled.

7 A. Again, the presence of the children with two nude males and
8 an intimate pose or position. There's obviously a camera
9 involved, because there is a picture taken of them. And the
10 child is handing the camera to Mr. Barry.

11 BY MR. JARVIS:

12 Q. So do you believe that if some pedophile was to get just
13 this picture, he or she would look at it and be sexually turned
14 on?

15 MS. ZACK: Objection. Calls for speculation.

16 THE COURT: If he knows, he can answer the question.

17 A. I believe, yes, sir.

18 BY MR. JARVIS:

19 Q. Okay. And would the fact that they're both nudists and
20 have a right to be naked in their own home, would that factor
21 into your opinion?

22 MS. ZACK: Objection, relevance. Objection, calls for
23 facts not in evidence.

24 THE COURT: Sustained.

25 BY MR. JARVIS:

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Looking at 9b, you have two boys at the sink,
2 correct?

3 A. Correct.

4 Q. And one of them -- they're both naked, it looks like,
5 right?

6 A. Yes, sir.

7 Q. And wouldn't that be a normal thing for children to be
8 taught, how to wash dishes and to wash their own dishes?

9 A. Not in the nude, no, sir.

10 Q. Okay. So the fact that they're nude or nudists, that makes
11 all these pornography, in your opinion, correct?

12 A. The fact that they're nude, yes, sir, that's part of it.
13 Being nudists, no, sir.

14 Q. Okay. You understand that people have a right to be
15 nudists. Even kids have a right to be nudists, correct?

16 MS. ZACK: Objection. Relevance.

17 THE COURT: I'm going to sustain the objection.

18 BY MR. JARVIS:

19 Q. So would you consider that an unnatural pose?

20 A. Somewhat, yes, sir.

21 Q. Standing next to his brother while his brother washes the
22 dishes is unnatural?

23 A. Him leaning up against his brother, nude, with his penis
24 exposed, yes, sir, I consider that unnatural.

25 Q. But if he had his clothes on, it wouldn't be unnatural?

Chappell - Cross by Mr. Jarvis

1 A. Well, yes, sir, if they had their clothes on, yes, sir.

2 Q. Yes, sir?

3 A. It would be less unnatural.

4 Q. Have you ever seen two brothers while one of them is doing
5 something, the other one comes up and kind of bumps them in
6 their back with their bottom? Would that be unnatural?

7 A. That, no, sir.

8 Q. Well, how do you know that's not what was happening here,
9 they just don't have clothes on?

10 MS. ZACK: Objection. Calls for speculation.

11 THE COURT: I'll sustain the objection.

12 BY MR. JARVIS:

13 Q. But that's a possibility though, isn't it?

14 A. It's a possibility, yes, sir.

15 Q. Okay. So other than the nudity, there isn't any sexual
16 coyness. They're just smiling at the camera, right?

17 A. Yes, sir.

18 Q. And you have no information that it was intended or
19 designed to elicit a sexual response from a viewer, correct?

20 A. At the time the picture was taken, no, sir.

21 Q. At any later time?

22 A. No, sir.

23 Q. Okay. And that can be either somebody taking the picture
24 or the timer, correct?

25 A. It's possible, yes, sir.

Chappell - Cross by Mr. Jarvis

1 Q. You don't have any information that Mr. Barry knew this
2 picture was being taken or that he took it, correct?

3 A. Correct.

4 Q. And you don't have any information that he coerced or told
5 the boys to go stand over there so somebody can take your
6 picture, right?

7 A. Correct.

8 Q. You don't have that information on any of these pictures,
9 correct?

10 A. Correct.

11 Q. Do you know where this was taken?

12 A. Mr. Noonan's kitchen.

13 Q. Okay. All right. Moving to 9c, this is a facial picture
14 of Mr. Noonan and one of the boys, right?

15 A. Correct.

16 Q. And there's no genitalia showing at all?

17 A. That's correct.

18 Q. And yet you still consider that to be child pornography,
19 right?

20 A. No, sir.

21 Q. No, this one is not?

22 A. No, sir.

23 Q. Then what's the purpose of it being in here?

24 MS. ZACK: Objection.

25 THE COURT: I'm sorry. He didn't finish the question.

Chappell - Cross by Mr. Jarvis

1 BY MR. JARVIS:

2 Q. What's the purpose of it being in here if it's not
3 suspected child porn?

4 MS. ZACK: Objection.

5 THE COURT: Sustained.

6 BY MR. JARVIS:

7 Q. Okay. 9d, the overexposed chest. His penis is showing.
8 Does it look like to you that he's standing on his tiptoes?

9 A. Yes, sir.

10 Q. Okay. All right. Can't even see the boy's face, right,
11 except his mouth?

12 A. Correct.

13 Q. And the angle again could be the other child, the other boy
14 taking the picture, right?

15 A. It's possible, yes, sir.

16 Q. And there's no adult in this photograph?

17 A. No, sir.

18 Q. And then you don't any evidence that Mr. Barry knew it was
19 being taking or gave permission for it to be taken or coerced
20 or enticed or ordered the boys to take or be in the picture,
21 correct?

22 A. Correct.

23 Q. And no information that he conspired with Mr. Noonan to
24 allow this picture to be taken or to coerce or get the boys to
25 take this picture or to be in this picture, correct?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Okay. All right. Then 9e, one of the boys laying on a
3 couch with a cat and a red blanket it looks like. Is that the
4 same picture you have?

5 A. Yes, sir.

6 Q. And the genitalia is exposed. But we've already
7 discussed -- is the couch still not necessarily a sexually
8 suggestive place, setting?

9 A. It can be, yes, sir. It can be used as such and it cannot
10 be. It depends on the photograph.

11 Q. Okay. So in this photograph, would that be sexually
12 suggestive, the fact that he's actually on a couch?

13 A. With the red blanket and the totality of it, it's possible,
14 yes, sir.

15 Q. So the color of the blanket makes a difference?

16 A. Not the color, no, sir. The fact he's got a blanket on
17 there and the positioning of him, it can be, yes, sir.

18 Q. Okay. Help me out. Separate these items, because it's the
19 first time we've had a blanket. Is a blanket a part of some
20 sexual deal or do people normally have blankets and afghans on
21 couches here in Texas?

22 A. It depends on how it's being used, sir.

23 Q. Okay. And this one it looks like he's using it to cover up
24 his chest perhaps at that moment in time when the picture's
25 taken?

Chappell - Cross by Mr. Jarvis

1 A. Or possibly uncovering himself for the photograph to be
2 taken.

3 Q. Wouldn't that be speculation on your part?

4 MS. ZACK: Objection, Your Honor. Mischaracterization
5 of the answer given in response to the question Mr. Jarvis
6 posed, which was in fact speculation.

7 THE COURT: I think that the witness can point out if
8 there is in fact a mischaracterization.

9 BY MR. JARVIS:

10 Q. So in this case, in your opinion, the fact that it's a
11 blanket on a couch makes it sexually suggestive?

12 A. Well, including the child that's nude with his exposed
13 penis, the totality of those together, it could be possible,
14 yes, sir, that the couch can be used as a sexual --

15 Q. And what about the pose? To me it looks like he is sliding
16 off, basically, the couch, because his feet -- his right leg is
17 not on the ground. It appears his left leg could be on the
18 ground -- or his foot. But he's not spread eagle, spread out,
19 opened up. He just looks like he's sliding down what appears
20 to be a leather or vinyl couch. Is that what it appears like
21 to you?

22 A. Not sliding, no, sir. I do agree with the leg positioning.
23 The legs are slightly apart, making the penis clearly visible,
24 which to me is also the focal point of this photograph.

25 Q. And could it be he was jumping into the photograph with the

Chappell - Cross by Mr. Jarvis

1 timer on and just landed there? Is that a possibility?

2 A. It's possible, yes, sir.

3 Q. And, again, it's a little bit higher angle than the other
4 ones. But it's possible that the other boy could have taken
5 this picture, correct?

6 A. It's possible, yes, sir.

7 Q. And you don't have any information that Mr. Barry took this
8 picture, right?

9 A. No, sir.

10 Q. Or that he was even in the room?

11 A. No, sir.

12 Q. Or that he told the boys to either take or participate in
13 this picture?

14 A. No, sir.

15 Q. Or that he agreed or made any type of agreement or
16 conspiracy with Mr. Noonan to have this picture created,
17 correct?

18 A. No, sir.

19 Q. So you don't have any of that?

20 A. Correct.

21 Q. All right. Then under 9f, we have Mr. Noonan it looks like
22 in his bedroom and a very dark picture of one of the boys and
23 the dog on the floor, right?

24 A. Correct.

25 Q. Would this be in the same series as the just the dog and

Chappell - Cross by Mr. Jarvis

1 the boy?

2 A. I don't know about -- I don't have any time frame
3 reference. I just know that they were taken with Mr. Noonan's
4 camera.

5 Q. I'm going back to Government's Exhibit 4t, and it's hard to
6 tell -- all right. So anyway, I can't see on my picture the
7 boy's genitalia. Can you see it on a computer?

8 A. On a computer it's more clearly visible, because this is
9 printed off of a printer --

10 Q. Right.

11 A. -- it appears darker and then also projecting it on the
12 screen.

13 Q. But certainly it's not the focal point. I don't think
14 there is a focal point to this picture, do you?

15 A. No, sir.

16 Q. And so while it is in the bedroom, there's no sexual
17 coyness or anybody playing with themselves or any erect
18 penises, correct?

19 A. No, sir.

20 Q. And I guess -- can you tell on the computer if the boy is
21 actually nude?

22 A. Yes, sir.

23 Q. All right. But there's no information that it was intended
24 or designed to elicit a sexual response in a viewer, correct?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. And you have no information that Mr. Barry was in the room,
2 knew the picture was taken, or going to be taken, correct?

3 A. No, sir.

4 Q. And you have no information that Mr. Barry agreed
5 with Mr. Noonan to allow the picture to be taken, right?

6 A. Correct.

7 Q. And no information that Mr. Barry forced or coerced or
8 enticed either one of the boys to either be in the picture or
9 take the picture, right?

10 A. Correct.

11 Q. And, again, the angle is such that it's entirely likely
12 that the other boy took the picture, right?

13 A. Possibly, yes, sir.

14 Q. And Mr. Noonan's not even looking at the camera, correct?

15 A. Correct.

16 Q. Okay. Then the next one is 9g. One of the boys pointing
17 at the bed, and it looks like the side and almost back of the
18 dog, correct?

19 A. Correct.

20 Q. Now, in this one you can barely see his penis right next to
21 his left hand, correct?

22 A. It's -- I can see it clearly.

23 Q. Okay. Well, he's pointing at the bed, it looks like, and
24 laughing, right?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. So that wouldn't be a sexual pose, would it?

2 A. No, sir.

3 Q. And there's no adults, no other adult penises, or any
4 adults in the picture at all, right?

5 A. Correct.

6 Q. And with him laughing, that's not a sexual coyness,
7 correct?

8 A. No, sir.

9 Q. And other than him being nude, there's nothing sexual about
10 this picture at all, right?

11 A. Correct.

12 Q. And there's no information that Mr. Barry knew this picture
13 was being taken or that he allowed it or that he coerced or
14 enticed the boys to be either in it or to take the picture,
15 right?

16 A. Correct.

17 Q. And the angle of the picture looks like it could easily be
18 one of -- the other boy taking the picture, correct?

19 A. It's possible, yes, sir.

20 Q. All right. And you have no information that Mr. Barry took
21 the picture?

22 A. That's correct.

23 Q. Or that he conspired with Mr. Noonan to let the picture be
24 taken, had the picture be taken, put the boys in it, or had the
25 boys take it or that it was going to be child pornography at

Chappell - Cross by Mr. Jarvis

1 all, do you?

2 A. Correct.

3 Q. All right. 9h, it looks like one of the boys and Mr. Barry
4 and the dog, and the dog is turning back around I'm assuming to
5 look at the camera when it flashed. That makes sense, right?

6 A. It's possible, yes, sir.

7 Q. But Mr. Noonan is looking straight at the camera, the boy's
8 not. Do you agree with that?

9 A. Correct.

10 Q. All right. So there's no penises showing in this one,
11 correct?

12 A. No, sir.

13 Q. And the other boy's not in the picture. So, again, with
14 the angle, it's entirely conceivable that he took the
15 photograph, correct?

16 A. That is possible, yes, sir.

17 Q. Okay. And David Barry is not in here and you have no
18 information that he gave permission for this picture to be
19 taken, correct?

20 A. That is correct.

21 Q. Or that he allowed the boys to be in it or coerced them or
22 enticed them in any way?

23 A. Correct.

24 Q. Or that he conspired with Mr. Noonan to make this picture
25 or put the boys in it or have him take it, correct?

Chappell - Cross by Mr. Jarvis

1 A. That is correct.

2 Q. So in this picture, would that be child pornography, too?

3 A. No, sir.

4 Q. Okay. 9i, one of the boys sitting in the lap of

5 Mr. Noonan. Can't see any penises, correct?

6 A. No, sir.

7 Q. And it looks like Mr. Noonan's eyes are closed, correct?

8 A. Yes, sir.

9 Q. And, again, the angle is such that one of the other boys --
10 the other boy could have taken the picture, right?

11 A. Possible, yes, sir.

12 Q. And you have nobody touching any genitals, correct?

13 A. Well, the child is between Mr. Noonan's legs. Mr. Noonan
14 is nude. So, therefore, he could be pressed against his
15 genitalia.

16 Q. You're right. I apologize. Touching with hands. I'm
17 sorry. But you're correct, his back, of the boy, could be next
18 to Mr. Noonan's genitals?

19 A. Correct.

20 Q. Is that fair?

21 A. Yes, sir.

22 Q. All right. But you don't have any information that David
23 Barry knew this picture was to be taken or allowed the boys to
24 be in it, enticed them, coerced them, or forced them to be in
25 it, correct?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Or that he conspired with Mr. Noonan to create the picture
3 or have the boys in it, correct?

4 A. Correct.

5 Q. And you don't have any information that Mr. Barry intended
6 for this to be child pornography at the time it was taken?

7 A. Correct.

8 Q. Or at any time thereafter, correct?

9 A. Correct.

10 Q. All right. Then 9j. All right. This is the series of the
11 boys in the bathtub. You've got that --

12 MS. ZACK: Objection to counsel testifying.

13 THE COURT: But it's simply a description by way of
14 introducing the question.

15 MS. ZACK: This picture has not been introduced as
16 part of any series. This is a characterization by Mr. Jarvis,
17 and unless he can qualify --

18 THE COURT: It's not that it's a -- I think you're
19 putting too much emphasis on the word "series." It's not meant
20 to be any technical term. It's a description that could apply
21 to more than one of the pictures is how I understood it and
22 that's all.

23 MS. ZACK: Okay.

24 BY MR. JARVIS:

25 Q. Now, in this picture they're both in the tub together and

Chappell - Cross by Mr. Jarvis

1 they've got the little bubbles on their face like kids do,
2 right?

3 A. Correct.

4 Q. And you can't see -- or at least in my picture you can't
5 see any of their genitalia?

6 A. No, sir.

7 Q. All right. Now, we know this was in -- made from what
8 camera?

9 A. Mr. Noonan's camera.

10 Q. Okay. And that's the one that we know has a timer on it,
11 right?

12 A. Yes, sir.

13 Q. Okay. So either somebody took the picture or the timer
14 took the picture, correct?

15 A. Correct.

16 Q. But you don't know who it is that took the picture?

17 A. No, sir.

18 Q. And you don't know even when this was taken, do you?

19 A. No, sir.

20 Q. We just know there were a couple of shots of the boys in
21 and out of the bathtub area, right?

22 A. Correct.

23 Q. And we assume -- you assume that they were taken pretty
24 much at the same time or right then, one right after another,
25 correct?

Chappell - Cross by Mr. Jarvis

1 A. No, sir. They could have been taken minutes, hours, a
2 couple of days apart.

3 Q. Okay. Do you have their numbers in order?

4 A. Some of them are in order of the bathroom shots, some of
5 them aren't. So some of them could have been taken together,
6 some of them could not.

7 Q. Okay. But you don't have any information that Mr. Barry
8 was in the room when the picture was taken?

9 A. No, sir.

10 Q. Or that he gave permission for it to be taken?

11 A. Correct.

12 Q. Or that he knew that it was even going to be taken?

13 A. Correct.

14 Q. And there's no information that Mr. Barry allowed his boys
15 to be in the bathtub and have their picture taken by anybody
16 else, correct?

17 A. Correct.

18 Q. And there's no information that he conspired with
19 Mr. Noonan to have that picture taken or to allow the boys to
20 be in it or to take it themselves, correct?

21 A. Correct.

22 Q. And there's no information that Mr. Barry intended for this
23 to be any type of child pornography, right?

24 A. Correct.

25 Q. At any time?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Okay. And 9k, this is -- I'm assuming this is the same boy
3 that we had a picture of before. Does that look like the same
4 boy? It looks like a different boy.

5 A. It looks like the same one to me but --

6 Q. From 9e to 9k?

7 MS. ZACK: Your Honor, I'm going to object to
8 relevance, whether it's one of the boys or the other of the
9 boys, it doesn't change what it's a picture of.

10 THE COURT: I'll sustain that objection.

11 BY MR. JARVIS:

12 Q. All right. This one, he's obviously naked on the couch
13 with the red blanket. He's got his head tilted. Looks like
14 the same angle. That could have been his brother taking the
15 picture, correct?

16 A. Possible, but for me highly unlikely.

17 Q. And he's obviously naked and you can see his penis, right?

18 A. Correct. Yes, sir.

19 Q. And his penis is at the bottom quarter of the page and his
20 face is more in the middle. But one could argue the focus is
21 either one, correct?

22 A. Correct.

23 Q. All right. But there's no adult, there's no adult penises
24 in the picture, right?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. And there's no evidence that Mr. Barry knew this was being
2 taken, was in the room while it was being taken, or gave
3 permission for it being taken before it was taken?

4 A. That is correct.

5 Q. And no information that Mr. Barry agreed with Mr. Noonan or
6 conspired with him to have this picture taken or for the boys
7 to be in the pictures, right?

8 A. That is correct.

9 Q. And no information that Mr. Barry intended for this to be
10 child pornography, correct?

11 A. Correct.

12 Q. And none of these nine pictures -- or, excuse me,
13 Government's Exhibit No. 9 are in David Barry's computer,
14 right?

15 A. Of these selected ones, no, sir, I do not believe so.

16 Q. So these came from Mr. Noonan's camera and are not on
17 Mr. Barry's computer, right?

18 A. I would have to double-check to make absolutely sure, but I
19 believe these selected pictures are not.

20 Q. Because otherwise we already have gone through them in
21 four --

22 A. Not necessarily, sir, because those were four selected
23 pictures.

24 Q. Okay. But as far as you know, they're not on there?

25 A. I would have to double-check to answer that correctly.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Let's go to 17.

2 MS. ZACK: Your Honor, if we may, before we start 17,
3 could we take a quick break?

4 THE COURT: Sure.

5 MS. ZACK: Thank you.

6 MS. MINICK: Judge, if we may have a couple extra
7 minutes, because earlier the rest rooms out here were not open,
8 so we have to go up or down to find another one.

9 THE COURT: I'm glad you told me. That's fine. Is 15
10 minutes enough?

11 MS. MINICK: That would be great. Thank you.

12 THE COURT: All right. Thank you. You're excused
13 until then.

14 (Recess from 10:38 a.m to 10:53 a.m.)

15 (Open court, Defendant present.)

16 THE COURT: I think we're ready to proceed. Thank
17 you. Take the stand, please. You may all be seated.

18 **CROSS-EXAMINATION CONTINUED**

19 BY MR. JARVIS:

20 Q. All right. Let's go to 20, Government's Exhibit 20. Tell
21 me when you're there, Agent.

22 A. Yes, sir.

23 Q. Okay. 20 is from Mr. Barry's camera, correct?

24 A. That is correct.

25 Q. And it says these are selected images, but when we looked

Chappell - Cross by Mr. Jarvis

1 at them the other day, I counted 20 images on the camera and
2 there are 20 images prepared. Is that what your records show,
3 that he only had 20 images on his camera?

4 A. No. He's got far more images than that on the camera.
5 What you reviewed is probably the same 20 that are -- we
6 selected.

7 Q. Okay. All right. Well, let's look at those. The first
8 one, 20a, is a picture of Mr. Noonan and Mr. Barry, correct?

9 A. Yes, sir.

10 Q. There's not any children in that picture?

11 A. No, sir.

12 Q. And Mr. Noonan has his arm around Mr. Barry. But it looks
13 like a second shot of a previous picture we've already seen.
14 Would that be fair?

15 A. A similar picture, yes, sir.

16 Q. Okay. But there's no children in that one. So that
17 wouldn't be considered child pornography at all, correct?

18 A. No, sir.

19 Q. No, sir, I'm correct or no, sir, I'm wrong?

20 A. No, sir, it's not child pornography.

21 Q. Okay. Thank you. And then 20b is what appears to be a
22 picture of Noonan's penis, correct?

23 A. Correct.

24 Q. Now, going back to a, you don't know who took this picture,
25 right?

Chappell - Cross by Mr. Jarvis

1 A. No, sir.

2 Q. Same with b, you don't know who took that picture?

3 A. Correct.

4 Q. And the same with c, you don't know who took that picture?

5 A. Correct.

6 Q. It could be either an adult, one of the boys, or the timer,
7 correct, on all three of those?

8 A. Correct.

9 Q. But the 20b is certainly not child pornography, right?

10 A. No, sir.

11 Q. Same with 20c?

12 A. Correct.

13 Q. All right. Then we have 20d. This is with Mr. Barry,
14 Mr. Noonan in the middle, a white-haired man with a mustache,
15 and the two boys, correct?

16 A. Correct.

17 Q. And you don't know who took that picture?

18 A. No, sir.

19 Q. But compare it to -- scoot on down to 20i, the one that has
20 Mr. Noonan holding one of the boy's arm up. And mine shows a
21 black line across it.

22 A. Correct.

23 Q. Is that the way it came on the computer?

24 A. Yes, sir.

25 Q. But it looks like one in this -- I don't want to say

Chappell - Cross by Mr. Jarvis

1 series, but one after another or some very similar pose as 20d?

2 A. Correct.

3 Q. Okay. So we can -- you can assume that they were taken one
4 before the other or really close together in time?

5 A. More than likely, yes, sir.

6 Q. Okay. And let's go to d. There's no children penises
7 showing, correct?

8 A. No, sir.

9 Q. And there is Mr. Barry's and the unknown man's penis
10 showing a little bit, correct?

11 A. Correct.

12 Q. Now, with the angle, it could easily be a timer taking this
13 picture, right?

14 A. It's a possibility, yes, sir.

15 Q. It could be set up right where either the TV or little
16 table is and one of the boys run right in and jump in
17 somebody's lap?

18 A. That's possible, yes, sir.

19 Q. Okay. And would you consider this child pornography?

20 A. No, sir.

21 Q. Okay. And then since we're talking about that, 20i,
22 there's no penises at all in that picture, right?

23 A. No, sir.

24 Q. So that wouldn't be child pornography either?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Then we go to 20e, and this is the beginning of a
2 group of what I've been calling the painting pictures. 20e, f,
3 g, and h, correct?

4 A. Correct.

5 Q. All right. And this is one of the boys painting. Do you
6 know where this was taken?

7 A. No, sir, I do not.

8 Q. Do you know when it was taken?

9 A. No, sir, I do not.

10 Q. And you don't know who took it?

11 A. No, sir.

12 Q. And there's no -- I can't tell if their penis is showing,
13 can you?

14 A. It's very difficult to see, correct, sir.

15 Q. So would that be considered child pornography?

16 A. No, sir.

17 Q. But that would be taking a picture of a naked boy in a
18 home, right?

19 A. Correct.

20 Q. Kind of like doing regular things that people do, painting.
21 They just happened to be painting naked?

22 A. Correct.

23 Q. Like a nudist, right?

24 A. Yes, sir.

25 Q. Okay. And then 20f, this is a picture of both boys

Chappell - Cross by Mr. Jarvis

1 painting; and you can barely see in the first, the front boy,
2 his little penis hanging there, I think. Is that what you see?

3 A. Correct. Yes, sir.

4 Q. But certainly not a suggestive pose?

5 A. Correct.

6 Q. And it doesn't even look like they're posed. They're
7 actually painting?

8 A. Correct.

9 Q. They're just painting naked, right?

10 A. Yes, sir.

11 Q. And would that be considered child pornography?

12 A. No, sir.

13 Q. All right. Because it's just nudists doing regular stuff
14 that people do, right?

15 A. It's two nude boys painting. I wouldn't -- I don't know if
16 I would characterize it that way, but it's just two nude boys
17 painting.

18 Q. Okay. Same thing with g. You can see one of the boy's
19 penises, the far one, but you can't -- I mean, you don't know
20 when this was taken or who took it, correct?

21 A. Correct.

22 Q. Would you consider that to be child pornography?

23 A. A little more -- more so than the other pictures only
24 because the genitalia is clearly visible. But, again, they are
25 painting. There's no other activity going on. So probably not

Chappell - Cross by Mr. Jarvis

1 on this picture, no, sir.

2 Q. I mean, if this was the only picture you had --

3 A. Correct.

4 Q. -- you probably wouldn't consider that child pornography?

5 A. Right, if it's the only picture I had in and of by itself,
6 no, sir, I would not.

7 Q. Because they're actually doing an activity. They just
8 happen to be naked while they're doing it?

9 A. Correct.

10 Q. Okay. All right. And then 20h is Mr. Barry painting
11 naked, and there's no kids in there at all, right?

12 A. Correct.

13 Q. And you don't know where that was taken, right?

14 A. No, sir, I do not.

15 Q. It could have been taken in his own home?

16 A. Correct.

17 Q. Most people don't paint other people's houses. I try not
18 to.

19 A. Unless they're getting paid. But, no, sir, I don't know
20 where this was taken.

21 Q. Okay. And he happens to be naked?

22 A. Right.

23 Q. We've already discussed i. And then the rest of the
24 photos, I think, j, k, l, m, n, o, p, q, r, s -- through s, all
25 have one of the two of the boys with clothes on, most of them

Chappell - Cross by Mr. Jarvis

1 are Christmas pictures, right?

2 A. Right.

3 Q. All right. So none of those are going to be child
4 pornography, correct?

5 A. Correct.

6 Q. And then the last one in this series, 20t, do you know
7 where that was taken?

8 A. Mr. Noonan's residence.

9 Q. Okay. So that's Mr. Noonan and one of the boys, right?

10 A. Correct.

11 Q. And you don't know who took that picture?

12 A. No, sir.

13 Q. And they obviously have all their clothes on?

14 A. Correct.

15 Q. And so that wouldn't be considered child pornography
16 either?

17 A. No, sir.

18 Q. Okay. All right. And these pictures are not on anybody's
19 computer, right?

20 A. Some of the pictures are, not all of them, no, sir.

21 Q. Some of them are?

22 A. Yes, sir.

23 Q. The ones with Mr. Barry and Mr. Noonan sitting together and
24 then the one with the unknown male on the right-hand side of
25 the couch, right?

Chappell - Cross by Mr. Jarvis

1 A. And we have -- and some of the Christmas pictures are on
2 Mr. Barry's computer.

3 Q. Okay. But looking at 20t, would that be an unnatural pose?

4 A. Unnatural? No, sir.

5 Q. But they're not related?

6 A. No, sir. I didn't say unnatural, but, yes, they're not
7 related, correct.

8 Q. Because we talked about a pose very similar to this earlier
9 and they were naked and you said that was an unnatural pose
10 because they weren't related and they were naked. And here
11 they're not related but they have clothes on and this one is
12 not an unnatural pose, is it?

13 A. No, sir, this particular pose in this picture is not --
14 does not appear to be unnatural.

15 Q. Okay. I think -- have we covered all of the naked pictures
16 that you're aware of?

17 *MS. ZACK:* Objection. Vague.

18 *THE COURT:* Of the -- can you be more precise about
19 what you are including in the description?

20 *MR. JARVIS:* Yes, ma'am.

21 BY MR. JARVIS:

22 Q. That have been admitted into evidence. Have we covered all
23 of them?

24 A. That are within this exhibit list, I believe so, yes, sir.

25 Q. Okay. I'm just making sure --

Chappell - Cross by Mr. Jarvis

1 A. Right.

2 Q. -- that me and you have covered all of them. I don't want
3 to leave one behind accidentally.

4 Now -- well, we did. Look at 24. On the 24b, I
5 think you and I talked about this one before at the top and the
6 center?

7 A. Correct.

8 Q. And -- well, as I recall, and correct me if I'm wrong, but
9 I think you told me you couldn't tell if that was one of the
10 O.B. or R.B., correct?

11 A. Correct.

12 Q. Because it's just too difficult to tell?

13 A. Correct.

14 Q. So you're not counting that one as part of the case, is
15 what, I think, you and I talked about, if I remember correctly?

16 MS. ZACK: Objection, Your Honor. It's not for him to
17 determine what is or isn't part of something. That's a legal
18 conclusion. That's for the Court to determine.

19 THE COURT: Rephrase the question.

20 BY MR. JARVIS:

21 Q. Are you using this picture to say that Mr. Barry produced
22 or conspired to produce child pornography?

23 MS. ZACK: Objection.

24 THE COURT: I'm going to ask you to rephrase the
25 question. I don't understand what you're asking.

Chappell - Cross by Mr. Jarvis

1 BY MR. JARVIS:

2 Q. Okay. It's obvious in these other pictures taken -- I
3 think these are from Mr. Noonan's computer, right?

4 A. Correct.

5 Q. That you can tell who the people are, correct?

6 A. Correct.

7 Q. And that top center photo, you can't tell who that child
8 is?

9 A. Correct. It is difficult for me, yes, sir.

10 Q. Okay. And so you don't have any information that Mr. Barry
11 conspired to produce that or who took the picture, correct?

12 A. Correct.

13 Q. And you don't have any information that he even knew it was
14 taken?

15 A. Correct.

16 Q. Or even knows who the person is?

17 A. Correct.

18 Q. All right. And that he didn't conspire with Mr. Noonan to
19 do anything with this picture, right?

20 A. That I know of, no, sir.

21 Q. Okay. All right. And this six -- or actually nine photos
22 on one sheet of paper, why are they like this?

23 A. Some of these are thumbnail pictures and so they're small
24 to begin with. The very first picture in this series is about
25 the size that they would be very difficult to see. So only for

Chappell - Cross by Mr. Jarvis

1 presentation purposes, so they would be a little bit easier to
2 see, we made them larger and put them on a contact sheet.

3 Q. Okay. So you took them as thumbnails, put nine on a piece
4 of paper, blew them up and made them so we could see them?

5 A. Correct.

6 Q. Okay. All right. So they didn't come like this in the
7 computer?

8 A. No, sir.

9 Q. Okay. So we've already covered all of those pictures in
10 other areas, right?

11 A. Correct. Yes, sir.

12 Q. Now, Craig had two computers, correct -- Mr. Noonan, sorry?

13 A. Mr. Noonan, yes, sir.

14 Q. He had a laptop and a desktop, right, and they've been both
15 been admitted into evidence, correct?

16 A. Correct, yes, sir.

17 Q. And in Government's Exhibit 25 are the three pictures from
18 Mr. Noonan's desktop?

19 A. Correct.

20 Q. And we've gone over, I think, each one of those, haven't
21 we?

22 A. Correct. Yes, sir.

23 Q. Okay. All right. Now, I want to go over the chats a
24 little bit with you. Can you pull those up, please? Are you
25 ready?

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. Okay. As I recall your direct testimony yesterday, you
3 said there were at least 37,000 lines or messages. Did I write
4 that down right?

5 A. Approximately, yes, sir.

6 Q. Okay. That's a number we can use and be pretty close?

7 A. Correct.

8 Q. All right. And when you say "lines," does that mean if one
9 of these chats has a line that says "hey" and then space and
10 then another line that says "whatcha" and then the next line
11 says "doing," would that be three lines or one line?

12 A. No, sir. It's approximately 37,000 messages, not lines.
13 So one messages could have five lines of text.

14 Q. Okay. That's what I needed to understand. Thank you.

15 A. Yes, sir.

16 Q. All right. Let's look at 7A. And what's this date created
17 on the first page, January 8th, 2013?

18 A. That's this report. This report was created. That's our
19 date. That's when this chat report was created and put
20 together.

21 Q. Does that mean within a couple of days before that is when
22 you found this chat?

23 A. No, sir. It's just when I put it together in this format
24 right here.

25 Q. Okay.

Chappell - Cross by Mr. Jarvis

1 A. And exported it.

2 Q. All right. Now, this first one, 7a, which is only a page
3 with Andrew, there's no talk of sex and there's no talk of
4 pictures, is there?

5 A. No talk of sex and pictures? No, sir, there isn't.

6 Q. It's really just talking about being nudists and being
7 careful about being a nudist, right?

8 A. Being naked, yes, sir.

9 Q. Well, the third line, 188, says, "You have to be careful
10 who you tell that you're a nudist"?

11 A. Correct.

12 Q. Okay. And I notice on the left-hand side, under the word
13 "record," there's a number and they're all in chronological
14 sequence, correct?

15 A. Correct.

16 Q. And is that a number you put on there?

17 A. No, sir.

18 Q. Okay. How's that number come about?

19 A. The program that I use to parse this uses that record
20 number to keep track of each of the messages depending on where
21 they're found. So you could have a part of this chat or a
22 conversation, part of it could be found in one part of the
23 computer or the hard drive, another part could be found in
24 another part and it uses the record numbers to keep track of
25 all that. It's basically -- doesn't really mean anything other

Chappell - Cross by Mr. Jarvis

1 than the program itself utilizing it.

2 Q. And that's your program you used to analyze it?

3 A. Correct.

4 Q. Not the computer's program to produce it?

5 A. Correct.

6 Q. Okay. So you're telling me when I'm chatting with somebody
7 on the computer through Skype or whatever you're doing it,
8 those messages don't go to the same spot in the computer? They
9 go to two different spots?

10 A. They can go to the same spot, and they can also go at the
11 same time go elsewhere. It depends on how the instant
12 messaging program is set up. Skype, for instance, your
13 example, Skype has a setting where you can save your logs, your
14 calls and all that and that will be saved to a specific folder
15 for Skype, whether it's in your documents or where you decide
16 to. At the same time the computer utilizes its memory and
17 system volume information and other parts of the operating
18 system and the hard drive to make that program or Skype
19 function properly. And when it's doing that, it's recording
20 data and then that data is stored in those various different
21 parts that the operating system and Skype is using to create
22 your Skype conversation. And what this does is it goes in and
23 it finds that information, determines if it's there, and if it
24 is, then makes a record of it and brings it out and then I
25 analyze it.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. And you selected these chats out of all of the 37
2 messages, correct?

3 A. The 37,000?

4 Q. The 37,000, excuse me.

5 A. These were -- are selected from the conversations that I've
6 been able to put together out of the 37,000 messages.

7 Q. And how many have you been able to put together?

8 A. I don't know off the top of my head. There's numerous.

9 Q. Most of them?

10 A. I don't know how many to start there were to begin with.
11 There's almost 37,000 messages. How many of those are part of
12 conversations or one-line messages, I don't know. All I can do
13 is put them together as a conversation if possible to do that.
14 And like I say, I don't know how many of those that I have.
15 There are several though. There are several more than this
16 that are either unintelligible or basically the same
17 conversation, because we found it in a different spot. It's
18 the exact same thing.

19 Q. Okay. So they can be in two different spots, maybe more?

20 A. Right.

21 Q. Okay. Let's go to 7b. Now, this is the one where he's
22 talking to Quateroy5 and talking about, "My oldest is turning
23 into a little clown and really good with a camera. So he will
24 want to take everyone's pictures, which is good. We'll have
25 fun pictures to share of the event."

Chappell - Cross by Mr. Jarvis

1 Now, there's no sex talk in this page and a half,
2 is there?

3 A. No, sir.

4 Q. And he's talking about fun pictures, but he doesn't put
5 "fun" in quotations as if he's meaning something other than
6 just fun pictures, right?

7 MS. ZACK: Objection. Calls for speculation.

8 THE COURT: I'll sustain the objection.

9 BY MR. JARVIS:

10 Q. Well, reading just the word "fun," he's talking about the
11 regular definition of "fun," correct?

12 MS. ZACK: Objection. Calls for speculation.

13 THE COURT: I'll sustain the objection.

14 BY MR. JARVIS:

15 Q. He doesn't use the term "sexy pics," does he?

16 A. No, sir.

17 Q. Or pictures that is going to turn somebody on, right?

18 A. No, sir.

19 Q. And he could have very well put that in there and said,
20 "Yeah, we're going to love wanking to these later," but he
21 didn't do that, did he?

22 A. No, sir.

23 Q. Okay. Now, going to 7c, this is with Roxas13066. This is
24 the one talking about O.B. having surgery at the beginning of
25 it, right?

Chappell - Cross by Mr. Jarvis

1 A. Correct.

2 Q. Oh, and let me ask you: When you selected these and
3 selected the starting point, is that really the starting point
4 of that conversation?

5 A. Yes, sir -- well, it's not the starting point of the
6 conversation. It's the starting point of what I was able to
7 piece together. There may be other parts of it that the
8 computer was not able to recover, my program couldn't recover.
9 This is what I was able to put together.

10 Q. So this is not a complete conversation, as far as you know?
11 It's just what you were able to recover?

12 A. Correct.

13 Q. There could be pages before or pages after in each one of
14 these, right?

15 A. That's correct.

16 Q. Okay. This was talking about the surgery, and then there's
17 supposedly a picture saying surgery on the left of the picture.
18 But you have no idea what picture, if one was sent, what it
19 looked like, right?

20 A. Which picture it is, no, sir, I do not know.

21 Q. Because it could be, just like the ones we saw in 20, with
22 the boys painting, like 20f?

23 MS. ZACK: Objection. Calls for speculation.

24 THE COURT: Rephrase it.

25 BY MR. JARVIS:

Chappell - Cross by Mr. Jarvis

1 Q. It could be a picture that isn't child pornography, right?

2 A. It's possible, yes, sir.

3 Q. Because going on down to line to 6917, he's talking about
4 being nudists and being naked like dad. That would be
5 wfglassman, correct?

6 A. Correct.

7 Q. So this context is about the boys being like dad naked,
8 correct?

9 A. Correct.

10 Q. And not any sexual connotation of abusing the boys,
11 touching the boys, or having sex with the boys, right?

12 A. That's -- yes, sir, that's possible, yes, sir.

13 Q. Well, there's nothing like that anywhere in this one, two
14 three -- three pages of chat, no sex talk about it at all, is
15 there?

16 A. No, sir.

17 Q. And this is the one that supposedly has the picture of
18 naked boys, but it's -- you don't even know if it was child
19 pornography or just a shot of the boys without their clothes
20 on, right?

21 A. Correct.

22 Q. And then 7d, this one is with Michael Wright. And the
23 first couple pages is talking about, "We're in Houston. We're
24 going to have a big party." And the other guy, Mr. Wright,
25 saying, "Be careful." And basically whoever wfglassman is

Chappell - Cross by Mr. Jarvis

1 saying, "That's okay. Between uncle -- me, myself, and their
2 uncle, they'll be okay," right?

3 A. Correct.

4 MS. ZACK: Your Honor, I'm going to object to the
5 phrasing of --

6 THE COURT: He answered the question. So I'm not sure
7 if you're objecting to a question that's already been answered.

8 MS. ZACK: I'm not, Your Honor. I'm objecting to the
9 way that Mr. Jarvis is phrasing, the we don't know who
10 wfglassman is. I mean, this Court has already said that
11 there's evidence of who it is.

12 THE COURT: I have heard it. So if the witness
13 disagrees with the question, he can answer, no, he doesn't
14 agree with the question.

15 BY MR. JARVIS:

16 Q. And then on the next page, line 7043 -- actually 7042 and
17 7043, "Most of the guys are friends of his. A couple of them
18 may bring their own boys. I hope they do, so the boys can be
19 naked with other boys there," right?

20 A. Yes, sir.

21 Q. And so there wasn't any conversation of, gosh, it's going
22 to be fun to have naked boys around us and all naked men, was
23 there?

24 A. At that point in the conversation, no, sir.

25 Q. No. He was talking about having his boys be around other

Chappell - Cross by Mr. Jarvis

1 boys and being comfortable being naked around other boys,
2 right?

3 A. Correct, at that point in the conversation, yes, sir.

4 Q. Okay. But then we go over to the next page and it's 7052,
5 it's Mr. Wright saying, "I wouldn't keep it a clean party
6 then," right?

7 A. Correct.

8 Q. And there's no conversation -- in fact, you go farther down
9 in 7057, it's Mr. Wright saying, "Just want you to be willing,"
10 talking to wfglassman, correct?

11 A. Correct.

12 Q. He's not saying anything about want the boys to be willing,
13 is he?

14 A. Correct.

15 Q. There's no sexual connotation or enticement or anything
16 about I want to see or want to be with those naked little boys,
17 is there?

18 A. Correct.

19 Q. And then the back page -- or the next page, 7065 and 7068,
20 is sexual comments between the two grown-ups, right, about
21 grown-ups, correct?

22 A. Well, between the two users. I don't know who this Michael
23 Wright is. So I don't know if he is a grown-up or isn't, but
24 they're talking about each other, yes, sir.

25 Q. So there's no talking about wanking the boys or being naked

Chappell - Cross by Mr. Jarvis

1 with the boys or taking advantage of the boys of Mr. Barry,
2 right?

3 A. Correct.

4 Q. Okay. Then you go to 7e, talking about with nudemac. "See
5 my boys. How cute." And, again, you don't know what picture
6 it is, right?

7 A. Specifically, no, sir, I do not.

8 Q. And there's no talk in this one at all about the pictures
9 turn me on, is there?

10 A. Specifically that, no, sir.

11 Q. Well, right after glassman says, "See my boys," nudemac
12 says, "How cute"?

13 A. Correct.

14 Q. There's nothing in there, ooh, I'm going to get excited
15 looking at this tonight, anything near that, right?

16 A. Correct.

17 Q. So there's no sexual connotation about the picture. So
18 whoever nudemac is, whatever picture he received, he didn't
19 comment that it was sexually exciting to him, did he?

20 A. Oh, correct, no, sir.

21 Q. Okay. Then on 7f, line 1678, talking about the little one
22 has to have surgery on Friday, they discuss that. And then two
23 pages down, 6671, Mr. Glassman starts talking about finishing
24 his master's and having 17 essays and all the work he's got to
25 do. And then again on 1703, another two pages away,

Chappell - Cross by Mr. Jarvis

1 Mr. Glassman says I'm getting excited with the end in sight.
2 So they're still talking about school. And this was done
3 1-5-11, correct?

4 A. Correct.

5 Q. And Mr. Berlioz -- is that how we pronounce that?

6 A. Berlioz is how I --

7 Q. Berlioz. I'll try to do better. Mr. Berlioz obviously
8 knows that there was a party, right?

9 A. Correct.

10 Q. But he never asked for pictures of the boys at the party,
11 does he?

12 A. In this chat, no, sir.

13 Q. And in all three of his chats, he never says, "Send me the
14 pictures of the naked boys y'all took at the party"? Anything
15 like that, correct?

16 A. I believe so. I would have to look at the other two chats.

17 Q. Okay. Well, we'll get to those. Well, you've got three
18 from him all on the same date, approximately the same time.

19 A. Correct.

20 Q. But there's breaks in them, correct?

21 A. Correct.

22 Q. Okay. So, 7g, down at the -- near the bottom, line 1778,
23 they're talking about the boys growing up and getting to
24 puberty. And the way I read it, and maybe you can correct me,
25 but it looks like they were talking about them being nudists or

Chappell - Cross by Mr. Jarvis

1 naked and then getting to puberty and that kind of changing
2 stuff. Kind of having questions. Is that the way you read it?

3 *MS. ZACK:* Objection. Calls for speculation.

4 *THE COURT:* He can say that. The question is, is that
5 how he read it.

6 A. Part of it is, yes, sir, that way.

7 BY MR. JARVIS:

8 Q. And then there's later on conversations about masturbation
9 and not feeling that there's anything wrong with wanking and
10 not something that they need to hide or feel guilty about, on
11 line 1782. Do you see that one?

12 A. Correct, yes, sir.

13 Q. And that is from glassman to berlioz. It's not that guy
14 saying back to glassman, I want to touch your kids, is it?

15 A. No, sir.

16 Q. There's nothing sexual about abusing the children from
17 either one of those, saying they want to, they're gonna, or
18 they have done that in any of these chats, is there?

19 A. It depends on your definition of abuse, specifically what
20 you're referring to. Because at the end of the chat he's
21 talking about them coming up and showing -- the children
22 showing Mr. Barry his -- their erect penises.

23 Q. Okay. Where are you? The --

24 A. Their hard-ons.

25 Q. -- 1795?

Chappell - Cross by Mr. Jarvis

1 A. That would be on, yes, 1795.

2 Q. Okay. What glassman says is, "They get hard too and are
3 proud of them. They have to show me when they get them. So I
4 think they understand a little bit about hard and soft." It
5 doesn't say anything about him touching them, wanting to touch
6 them, or has touched them?

7 A. Right, correct, it does not.

8 Q. So what you've got is a couple of little boys who are
9 growing up and they're looking at their body and something is
10 changing and they show it off. Nothing sexual about that.
11 That's what little boys do, right?

12 A. Correct.

13 Q. So that isn't sexual at all, is it?

14 A. Well, in a way, yes, it is. I mean, it's erect penises.
15 They're going through puberty. That's sexual in and of itself.

16 Q. But a 5 and 6 and 7-year-old is not going through puberty
17 yet. They're just getting random erections as little boys,
18 right?

19 A. It's -- yes, that is correct, but that's a physiological
20 event and it's related to sex and so therefore it can be sexual
21 in nature.

22 Q. Are you saying if a 5-year-old little boy gets an erection,
23 that's sexual in nature?

24 A. To the person that's looking at it? Yes, it can be.

25 Q. Yeah, but you don't have any evidence of that in any of

Chappell - Cross by Mr. Jarvis

1 these chats, though, that --

2 A. No, sir.

3 Q. -- it was?

4 A. No, sir. They're just talking about it.

5 Q. They're just talking about what naturally happens to little
6 boys, right?

7 A. Yes, sir.

8 Q. And doesn't that play right into them showing off their
9 bodies into all these pictures where they're jumping up and
10 down and showing off their naked bodies? It's just natural,
11 isn't it?

12 A. I don't believe it's totally natural, no, sir, but that's
13 my opinion.

14 Q. In line 1798 they're talking about, "It's all good. Can't
15 wait to see them at a resort with other kids their own age."
16 Again, the family nakedness, nudism thought process there,
17 correct?

18 A. That's what he says, yes, sir.

19 Q. Okay. All right. And let's move to 7h. This is with the
20 same person, and there's no sex talk in that one. It's about
21 going to school and the nurse looking at O.B.'s penis, right?

22 A. Correct.

23 Q. But there's no sex talk in that one and no abuse talk or
24 pictures or anything, right?

25 A. No, sir.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. 7i, this is with lookis99. Line 2129, "They don't
2 care, not into all of that yet, only 6 and 7." And that's
3 glassman. And then so he's telling the other guy, they look at
4 my penis or has seen my penis and shaved or unshaved, they
5 don't have any sexual thought about it, right?

6 A. That's what he says, yes, sir.

7 Q. Okay. And that's generally true for a 5, 6, 7-year-old,
8 right? They're not thinking sexually at that point?

9 A. They shouldn't be, no, sir.

10 Q. And you don't have any evidence that these boys were at the
11 time these chats were created, do you?

12 A. No, sir.

13 Q. Okay. And then he goes on to say that these two have seen
14 nudity so much they don't even care anymore, right?

15 A. Yes, sir.

16 Q. And then the last thing, "They talk to friends of mine
17 naked all the time on cam and they are naked like us." But
18 compare that to 7m -- and it is going to be four, five pages
19 down, 30449 and 30451 and the one below that. Are you with me?

20 A. Yes, sir.

21 Q. And at the very bottom of the page, it says, "I don't turn
22 on the cam home naked." And then later on he says, "I normally
23 would if they weren't home." And then farther on down, 3057,
24 "And I don't want them on the Internet naked. Just a cautious
25 thing on my part," right?

Chappell - Cross by Mr. Jarvis

1 A. That's what it says, yes, sir.

2 Q. And this is on February 3rd, 2011, versus January 6th,
3 2011, on that first one, the other one we've been talking
4 about, correct?

5 A. Correct.

6 Q. Okay. And then turning the page to 30462, 63, and 64,
7 that's where he describes that the kids are on the couch, but
8 they can't see us his laptop, right?

9 A. Correct.

10 Q. Which could be the same thing that is happening in this 7i,
11 they could just be sitting on the couch not seeing the laptop,
12 correct?

13 *MS. ZACK:* Objection. Calls for speculation.

14 *THE COURT:* I'll sustain that objection.

15 BY MR. JARVIS:

16 Q. You don't have any evidence that the boys ever got on a
17 Webcam naked, do you?

18 A. Just the chats saying that they're on the camera, where
19 Mr. Barry states the kids have been on the camera.

20 Q. Other than that one sentence, you don't have any other
21 information, do you?

22 A. I believe there's a -- it's referenced in other chats or at
23 least pictures are. I believe there are other chats as well.

24 Q. We just went over 7m. Do you have another one that talks
25 about being on the cam? Because on 7m he says he doesn't let

Chappell - Cross by Mr. Jarvis

1 them on the cam.

2 A. Right. But then in the one we just read, he says he does
3 let them on the cam, so.

4 Q. Okay. Now, on the one we're at now, 7i, this guy, whoever
5 lookis99 is -- I'm assuming it's a guy. It could be a girl --
6 it doesn't show any remarks from him which would make one think
7 that the boys were on the camera naked, does it?

8 A. In this chat, no, sir. Correct.

9 Q. So other than him -- than Mr. Glassman saying they've been
10 on there all the time, there's no evidence within the chat
11 showing they got on one?

12 A. Correct.

13 Q. Okay. Next one, 7j, near the top, 30714, he's talking
14 about working on his essays, correct?

15 A. What numbers are you on, sir?

16 Q. I'm sorry. Second line, 30714.

17 A. Oh, okay, yes, sir.

18 Q. Working on his essay, right?

19 A. Correct.

20 Q. And then they talk about the kids. And then we get way
21 over to 30766, top of the page, and 30768. Are you with me?

22 A. Correct.

23 Q. All right. This is with Mr. Unknown. The top of the page,
24 "Can't wait to see the three of you naked together." And then,
25 "Why's that?" "Because they haven't seen a grown man that is

Chappell - Cross by Mr. Jarvis

1 uncut."

2 Nothing sexual in that conversation, just they
3 haven't ever seen that before, right?

4 A. I have an issue with it. I mean, that to me is sexual in a
5 way, wanting to see his two children with another subject who's
6 possibly unrelated, we don't know obviously, but possibly
7 unrelated nude and letting them looking at this guy's penis.

8 Q. Well, I have an issue with it, too. But as far as sexual
9 assault or sexual abuse, looking at a nonerect penis is not any
10 type of abuse, especially if you're a nudist?

11 A. Indecency by exposure, isn't that a violation of law in the
12 state of Texas?

13 Q. Yes. Isn't it if you're in a public place? Laying around
14 your own home, you can be naked in your own home, can't you?

15 A. But he's talking about the other gentleman being nude and
16 looking at his penis.

17 Q. And as you go through this chat, isn't it obvious that that
18 man's a nudist, too, because that's all they're talking about,
19 isn't it?

20 MS. ZACK: Objection. Calls for speculation.

21 THE COURT: Sustained.

22 BY MR. JARVIS:

23 Q. All right. And then the next page over, 30779 and 30783,
24 they're talking about the camera and taking pictures. And
25 there's nothing in here saying it was for any sexual purpose,

Chappell - Cross by Mr. Jarvis

1 correct?

2 A. That is correct.

3 Q. And there's no conversation about trading pictures with
4 each other, right?

5 A. Well, he talks in 3079 that he's pretty cool with most
6 stuff, but if he gets a naked pic of the boys, just to keep it
7 private. So obviously he would have to get that picture from
8 somewhere.

9 Q. Well, my question was trading pictures, like a lot of child
10 pornographers do with I trade mine, you'll give me some of
11 yours, so I have new pictures to look at. Well, you testified
12 about that yesterday a little bit.

13 A. Correct.

14 Q. That that's common for child pornographers, to trade
15 pictures, right? It's kind of a currency for them?

16 A. That's one of the things they trade, yes, sir.

17 Q. Certainly. But it is one of the things, and there's no
18 conversation about that with this guy. I'll bring some
19 pictures that I have, and I'll let you have them if you'll give
20 me pictures of your boys?

21 A. Oh, no, sir, that specifically, no, sir, that's not in this
22 chat.

23 Q. Not anything anywhere near close to that?

24 A. Correct.

25 Q. Okay. All right. And it doesn't say it's for any kind of

Chappell - Cross by Mr. Jarvis

1 sexual purpose or that he's going to go home and use it for a
2 sexual purpose, right?

3 A. Correct.

4 Q. Okay. And you don't have any evidence that this guy ever
5 even came over or if pictures were even taken, do you?

6 A. No, sir.

7 Q. All right. Then 7k, kind of in the middle of the page
8 30651, this is where he's talking to another unknown and wants
9 to experience our first resort time with you so you can show us
10 the ropes. He's talking about taking the boys to Lone Star
11 right or Wild Wood?

12 A. Correct.

13 Q. And there's no conversation about sex, no conversation
14 about pictures, right?

15 A. No, sir.

16 Q. It's just talking about going to a family nudist camp,
17 correct?

18 A. Correct.

19 Q. Okay. 7l, this is one about the guy in Scotland. But over
20 here on 3142, 43, and on down through 3146, that's talking
21 about the Scottish boy, isn't it, not O.B. or R.B.?

22 A. Correct.

23 Q. Okay. And then turning two pages over, 31439 and 4340, the
24 unknown asks Mr. Glassman if he incorporates that into
25 massages, too? And I'm assuming they're talking about the

Chappell - Cross by Mr. Jarvis

1 penis or the wanking. And Mr. Glassman says, "No," right?

2 A. Okay. Repeat the question again, sir.

3 Q. Well, in 31439, Mr. Unknown was saying to Mr. Glassman, "Do
4 you incorporate that into massages, too?" And, of course, the
5 prior conversation is about masturbation after the massages in
6 Scotland, right?

7 A. Well, right before that comment, they're talking about in
8 the bathtub and the unknown is asking wfglassman about his sons
9 get hard when you're bathing them.

10 Q. Okay.

11 A. And then the page before that, they're talking about one of
12 the boys playing with himself.

13 Q. All right. But looking at 31422, "Does the massage
14 therapist rub his penis for him, too, even though he hasn't
15 come yet?"

16 A. Correct. Yes, sir.

17 Q. So back over here, "Do you incorporate that into massages?"
18 One of those variations were about the boy's hard penis or
19 masturbation is what they're talking about, correct?

20 A. Right, I don't know if it's relating back to the first part
21 of the chat, about the Scottish, or if it's referring back to
22 the son itself, I --

23 Q. But either way, Mr. Glassman says, "No"?

24 A. Correct.

25 Q. Okay. And then on the next page -- or page over, 31450 --

Chappell - Cross by Mr. Jarvis

1 A. Yes, sir.

2 Q. -- they are -- are they curious about their penises, too,
3 grabbing whatever? Mr. Glassman says, "No. They aren't
4 interested in it yet. They just like being naked." And then
5 Mr. Unknown says, "You and your buds have boners a good bit?"
6 And Mr. Glassman says, "We do, not from anything sexual, just
7 being naked."

8 I mean, it's just being naked all the way through
9 here, isn't it?

10 MS. ZACK: Objection. Vague.

11 THE COURT: I'll sustain that objection.

12 BY MR. JARVIS:

13 Q. Isn't the tenor of this chatting or this part of the chat
14 is it's just being naked, it's not sexual? Isn't that what he
15 says down here on 31454?

16 A. I take it, especially since he's talking about adults in
17 being erect and since an adult being erect is typically related
18 to sex, then to me I'm reading this as being naked is a sexual
19 excitement and it's making them erect.

20 Q. I understand that's how you read it. But if you look at
21 31454, that's not what Mr. Glassman says, is it?

22 A. Correct. That's what he typed, yes, sir.

23 Q. Okay. So from his words, that's his thought about it, at
24 least what he typed up that day, correct?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. And it could be different from yours and from mine, but it
2 could still be his truth, couldn't it?

3 A. That's what was typed in there, yes, sir. That's -- I
4 don't know what he was thinking. I just know that that's what
5 he typed.

6 Q. And that he's representing that's what he thinks?

7 MS. ZACK: Objection. Calls for speculation.

8 THE COURT: I'll sustain that objection.

9 BY MR. JARVIS:

10 Q. And then on 31475 and 476, 477, 478, the Mr. Unknown is
11 talking about his dick slipping through their legs. They
12 didn't think anything about it, just boys horseplaying.
13 Glassman says, "Of course." And then Glassman says, "Boys
14 don't think real sexual at that age." And Unknown says,
15 "right." Isn't that correct?

16 A. Correct.

17 Q. Okay. So, again, it's in Glassman's idea that boys aren't
18 thinking sexual at that young age, right? Whether he's correct
19 or not, that's an interpretation, but that's what he's writing
20 down, correct?

21 A. Correct.

22 Q. And that he never says in this chat that he's done that,
23 wants to do that, or will do that, does he?

24 A. Well, by his statement that he typed saying "cool," that
25 tells me that he's okay with that.

Chappell - Cross by Mr. Jarvis

1 Q. But that would be okay with somebody else doing it, because
2 that's what Mr. Unknown said. He never -- Mr. Glassman never
3 said, I'm going to do that, have done that, or look forward to
4 do that, has he?

5 A. He didn't says that specifically, no, sir.

6 Q. Or anything close to a plan of action to molest the boys?

7 A. That I know of, no, sir.

8 Q. That you have evidence of, right?

9 A. Correct.

10 Q. Okay. Then going to 7m, I have a question on line 30397
11 and 30398. Are you with me?

12 A. Yes, sir.

13 Q. All right. Because Mr. Unknown saying to Mr. Glassman, "So
14 do you play with other guys in front of your sons so they know
15 you're gay or do they know you're gay?" Glassman says, "No,
16 they don't get to see that. Their minds aren't ready to think
17 about sex between two people." And then later on, "You're not
18 sure if you could contain yourself if we both got hard playing
19 Wii?"

20 But there's no conversation about Wii earlier in
21 that page. It doesn't seem like it matches.

22 A. That may be from a previous conversation. I don't know.
23 Again, this is all I can recover. I don't have the entire
24 conversation. Whether this is the entire conversation or
25 whether it's previous conversations that took place that I

Chappell - Cross by Mr. Jarvis

1 don't have evidence, I don't know. So I don't know where this
2 reference for Wii or if it's referenced earlier or not.

3 Q. So these aren't the entire conversations then?

4 A. That I -- I don't know. That's -- again, this is what I
5 could put together.

6 Q. Okay. And then on the next page, 30402, Mr. Unknown is
7 saying, "To each his own." Mr. Glassman says, "Yeppers. You
8 think you will when they are older?" And Mr. Glassman says,
9 "No, probably not" -- excuse me, it says, "Probably not."
10 Talking about nudists and showing off, right?

11 A. Yes, sir.

12 Q. And then on 30419, about two pages over -- are you with me?

13 A. Yes, sir.

14 Q. Okay. They had been talking about wanking or masturbation
15 or j-o and then Mr. Unknown asks Mr. Glassman, "Have they seen
16 you do it already?" I'm assuming that's j-o, correct?

17 A. Correct.

18 Q. And Mr. Glassman says, "No," right?

19 A. Correct.

20 Q. And then on the next page, "Have they -- did they say
21 anything about it?" And Mr. Glassman says, "No. They aren't
22 interested in it," right?

23 A. Correct.

24 Q. So he's communicating to Mr. Unknown, that his boys aren't
25 sexual, correct?

Chappell - Cross by Mr. Jarvis

1 A. Yes. Correct.

2 Q. And what a perfect opportunity to say, "They're not into
3 it, but I sure like having some type of sex with them," right?

4 A. Well --

5 MS. ZACK: Objection.

6 THE COURT: Rephrase the question.

7 BY MR. JARVIS:

8 Q. He doesn't say anything sexual about him and the boys,
9 correct?

10 A. Yes, he does right before that. On 30408 and 30409, the
11 unknown subject asks, "Cool. You're going to teach them about
12 j-o, which is jerking off?" And Mr. Barry answers, "That I
13 will do."

14 Q. And then what's the next line?

15 A. "Want them to know that it is normal and okay to do."

16 Q. And tying that back to a previous chat where he says he
17 doesn't want them to be embarrassed and ashamed of
18 masturbation, which was in all of the psychology books I read,
19 why is that a sexual --

20 MS. ZACK: Objection.

21 THE COURT: Excuse me. Let him finish his question,
22 please.

23 BY MR. JARVIS:

24 Q. Why is that you thinking he's sexually molesting his own
25 kids if he's teaching them about masturbation?

Chappell - Cross by Mr. Jarvis

1 MS. ZACK: Objection.

2 THE COURT: I think the witness gave an answer, that
3 this was a sexual comment and now he's being asked to explain
4 his reason for saying that, as I understand the question. I'm
5 going allow that question.

6 A. I didn't say sexual abuse. You asked about sexual in
7 nature. That's sexual in nature. That's all -- that's what
8 that was.

9 BY MR. JARVIS:

10 Q. Okay. So you agree with me that teaching boys about
11 masturbation is probably, if done correctly, not sexual abuse?

12 A. Depending on how it's done and everything, yes, sir --
13 well, it's still sexual, but it's not sexual abuse, depending
14 on how it's done.

15 Q. Okay. We can agree then. Oh, and the line right above
16 that, Mr. Glassman says, "They will have their own sex. They
17 don't need to see mine," correct?

18 A. Correct.

19 Q. So -- all right. And then 30449, he's talking about not
20 being on cam and not turning on the cam when the boys are
21 around. We've kind of covered that earlier, correct?

22 A. Correct.

23 Q. Okay. Now, the last one I want to talk about, 7n, is the
24 one between Mr. Noonan and Mr. Barry, correct?

25 A. Correct.

Chappell - Cross by Mr. Jarvis

1 Q. Now, near the very top, it looks like sunman75 is Noonan,
2 right?

3 A. Correct.

4 Q. Okay. And he says, "I had a horrible day without you and
5 the monkeys to come home to," right?

6 A. Correct.

7 Q. That's Mr. Noonan, correct?

8 A. Correct.

9 Q. All right. And then on the next page he calls them
10 "monkeys" again. "Did you get your monkeys to bed naked and
11 safe," right?

12 A. Yes, sir.

13 Q. Okay. So, and then the last page, "Need to feed monkeys
14 well so they will grow." Apparently that's what Mr. Noonan
15 thinks about the boys, right? He makes three references to
16 them. I'm not saying it's derogatory, but that was just the
17 name he called them, correct?

18 A. Correct.

19 Q. Okay. And I don't see -- is this the full chat that you
20 were able to pull together?

21 A. Yes, sir.

22 Q. Okay. Well, I don't see anyplace on here where Mr. Barry
23 puts the boys on the camera for Mr. Noonan, do you?

24 A. No, sir.

25 Q. And it doesn't seem like -- they don't talk like they're --

Chappell - Cross by Mr. Jarvis

1 either one of them are naked, correct?

2 A. Correct.

3 Q. And there's no sexual connotation except for an old joke
4 about shaking it more than one time, right?

5 A. Correct.

6 Q. And certainly nothing sexual about the boys and Mr. Noonan
7 and Mr. Barry?

8 A. Correct.

9 Q. And it talks a lot about Mr. Barry trying to find a job?

10 A. Correct.

11 Q. Which is consistent with what he's talked about before,
12 correct?

13 A. Correct.

14 Q. So, and then you couldn't find any more chats between
15 Noonan and Barry that had something about taking pictures of
16 the boys?

17 A. That I can directly relate and say it's Mr. Noonan or
18 Mr. Barry, no, sir.

19 Q. Because I'm assuming out of all the chats you were able to
20 pull together, as a good investigator would decide, you would
21 bring to court the best ones for your case, correct?

22 A. Correct.

23 Q. And there's nothing between Noonan and Barry talking about
24 agreeing to make child pornography, correct?

25 A. In a chat, no, sir, I don't have anything, you're correct.

Chappell - Cross by Mr. Jarvis

1 Q. Okay. Do you have an e-mail?

2 A. No, sir.

3 Q. You don't have any written communication between Barry and
4 Noonan saying -- agreeing to creating child pornography, right?

5 A. Correct.

6 Q. Agreeing to allow the kids -- the boys to be -- having
7 their picture taken, correct?

8 A. In writing correct, I do not.

9 Q. You don't have anything in writing with Mr. Barry saying
10 you can use my boys in a picture, correct?

11 A. In writing, no, sir, I do not.

12 Q. You have nothing like that supporting the accusations of
13 the indictment, correct, in writing?

14 MS. ZACK: Objection. Asked and answered.

15 THE COURT: Sustained.

16 BY MR. JARVIS:

17 Q. And would you agree that they talked a lot?

18 A. Yes, sir.

19 Q. And yet you can't find anything other than this?

20 A. Because the majority of their contact via the computer was
21 by video cam and by Skype, which is not recorded. So I don't
22 have a written record of it. I have -- I can show where they
23 know each other on Skype, but the video chats are not recorded.
24 They're not kept. And so I have no evidence of what was said
25 during that. I can only show that that's what they did. So I

Chappell - Cross by Mr. Jarvis

1 do not have any written chats other than this.

2 Q. Okay. Did you run a word search on Mr. Barry's computer?

3 A. Yes, sir.

4 Q. For the traditional child pornography words like "lolita"
5 and those kind of word searches?

6 A. No, sir, not specifically those words.

7 Q. Well, what words did you search?

8 A. For Mr. Noonan's e-mail address and for Mr. Whittington's
9 e-mail address and for, I believe, a couple of words. I can't
10 remember off the top of my head which ones I ran specifically.

11 Q. You didn't run a search for something along the lines of
12 "naked little boys"?

13 A. I don't specifically remember doing that, no, sir.

14 Q. "Young tight boys," something that would lead a person to
15 believe that whoever was using this computer was looking for
16 sexual activity with young boys?

17 A. Okay. I ran a search similar to that on IEF for search
18 queries, not for evidence on the computer itself through FTK or
19 EnCase. So maybe I'm misunderstood your question.

20 Q. I think we're not communicating. Because you can go on
21 Google and put on "tight young boys" and a bunch of pornography
22 shows up, right?

23 A. Correct.

24 Q. And on your computer and in your research, you can find out
25 what they typed in on Google to go look for, right?

Chappell - Cross by Mr. Jarvis

1 A. If the information is still there, correct. Because that
2 is volatile information, yes, sir.

3 Q. And you didn't find anything suggestive of child abuse on
4 Mr. Barry's computer on his queries, did you?

5 A. No, sir.

6 Q. Not a single thing --

7 A. No, sir.

8 Q. -- right? And there are no known paid child pornography
9 sites looked at or paid for on his computer, is there?

10 A. That is correct.

11 Q. I mean, you went on truenudist.com. That's obviously not a
12 child pornography site or you guys would have shut that down a
13 long time ago, right?

14 A. Correct.

15 Q. You just got on it within the last year, correct?

16 A. Who, Mr. Noonan?

17 Q. No. You.

18 A. Oh, me?

19 Q. Yes.

20 A. Yes, during the course of this investigation, correct.

21 Q. Exactly. And on his computer there were literally
22 thousands of hits on truenudist.com, correct?

23 A. Correct.

24 Q. And no child pornography hits, which insinuated he was
25 looking for it through his computer, right?

Chappell - Cross by Mr. Jarvis

1 A. That's written information. It would be very hard for me
2 to tell if it was child pornography or what he was looking at.
3 Those aren't -- those search queries don't return images. They
4 return words and text.

5 Q. But then you take that and you go and check it out. I
6 mean, y'all have a list of known child pornography sites or
7 child pornography sites that y'all have already busted and you
8 can go up there and look at the list and if those match, then
9 you know he visited a known child pornography site?

10 A. Right. It's not a known child pornography Web site,
11 correct. But the hits that you have are individual profiles on
12 there, don't know what was being said or done contacting that
13 person. Remember this is -- allows for chat and allows for
14 contact via instant messaging, so I don't know what's being
15 passed back and forth.

16 Q. Certainly. But from the queries, you didn't find anything
17 suspicious?

18 A. No, sir.

19 Q. Okay. And you do -- and you did testify that he did look
20 for nudist camps for families so he could take the boys, right?

21 A. There were -- yes, sir.

22 Q. Now, going back to the pictures for just a second. The
23 Messenger cache and these pictures in it, you don't know back
24 or forth, where are the chats that go along with those
25 pictures?

Chappell - Cross by Mr. Jarvis

1 A. Don't know. The Messenger cache does not keep the chats
2 themselves. It is only a place that the program uses to allow
3 the rendering of the graphic file. Messenger -- MSN Messenger
4 does not save its chats to the computer by default. Some of
5 these chats that we've just discussed in the 37,000 instant
6 messages may be related to those.

7 Q. But you don't know?

8 A. But I don't know, correct.

9 Q. Okay. And you testified, I think, on direct yesterday
10 about a picture 17b and -- which is the same as 4b, which I
11 think you said was the same as 24a?

12 A. Correct.

13 Q. Okay. And the way I wrote it down was, it was created on
14 Craig Noonan's computer at 7:26 a.m. and then it was also
15 created separately on Barry's computer on a different date,
16 right, but it was taken with Noonan's camera. Did I get that
17 correct?

18 A. Okay. Can you repeat how you have it, sir?

19 Q. Okay. The way I wrote it down was, created on Noonan's
20 camera, right -- or, excuse me, the picture was taken from
21 Noonan's camera? I'm saying the wrong words.

22 A. Okay.

23 Q. Is that right?

24 A. Is it Noonan's camera or Noonan's computer?

25 Q. You can't take a picture with a computer, so it had to be

Chappell - Cross by Mr. Jarvis

1 somebody's camera, correct?

2 A. Correct. Okay. I see what you're saying. Go ahead, sir.

3 Q. It starts with Noonan's camera?

4 A. Correct.

5 Q. Created is the wrong word, but the picture was taken from
6 Noonan's camera, correct?

7 A. Correct.

8 Q. Okay. And then on two different dates, on two different
9 times, that picture was put on two different computers, right?

10 A. Yes, sir.

11 Q. And from what I understand, your -- you show that it was
12 put on Barry's computer first and then I think it's three
13 months later it's put on Noonan's computer?

14 *MS. ZACK:* Your Honor, I'm going to object as to vague
15 as to where he's getting this information. Is he referring to
16 something specific in an exhibit or just something in general?
17 I don't know what we're trying to follow.

18 *THE COURT:* Could you be more precise in what you're
19 referring to?

20 *MR. JARVIS:* I can try, Judge.

21 *THE COURT:* Thank you.

22 BY MR. JARVIS:

23 Q. From your testimony yesterday, what I wrote down from the
24 file, I'm just making sure I understand this, it got on Barry's
25 computer in June and then on Noonan's computer in September

Chappell - Cross by Mr. Jarvis

1 2010. Did I write that down, right?

2 A. I don't know if you wrote it down right, but what I have is
3 the -- that picture was created on Mr. Barry's computer on
4 June 18th, 2010. On September 16th of 2010, that same picture
5 was created in the Messenger cache on Mr. Barry's computer.

6 Q. Did it ever show up on Noonan's computer?

7 A. Yes, it did, sir.

8 Q. And when was it created on Noonan's computer?

9 A. I do not know, sir. It's a carved file, unallocated,
10 meaning it was probably deleted.

11 Q. But it was taken with Noonan's camera?

12 A. That is correct.

13 Q. Well, as an expert -- let me give you a hypothetical.

14 Noonan and Barry are at Noonan's house in Houston and one of
15 the boys is taking pictures. And the boys take the pictures.
16 Noonan and Barry both have their computers there in Houston.
17 One of the boys or the gentlemen take the disk from the camera
18 and insert it into Barry's computer. Would that hypothetical
19 on how that picture -- those pictures would get on Barry's
20 computer, would that work?

21 A. That is possible but highly improbable, but, yes, sir, it's
22 possible.

23 Q. To take pictures -- to take an SD card from a camera and
24 put it into somebody else's computer so they would have the
25 pictures?

Chappell - Cross by Mr. Jarvis

1 A. The boys doing it is what if --

2 Q. I got all four, any of the four doing it.

3 A. Oh, okay. Yes, sir. That's very possible, yes, sir.

4 Q. Okay. And then taking the hypothetical further, somehow
5 the picture is supposedly messengered to Noonan, who has the
6 picture anyway. Does that make sense?

7 A. Yes, sir, that's possible.

8 Q. But why would somebody send the picture back to the person
9 who has it on their own camera?

10 MS. ZACK: Objection. Calls for speculation.

11 MR. JARVIS: Judge, he's an expert.

12 THE COURT: I think the question is: Do you know a
13 reason. Does your expertise allow you to identify any reason
14 that would explain that, or is that something that would
15 require you to speculate as to the subjective reasons that
16 somebody did something?

17 THE WITNESS: I think it would be more speculative,
18 ma'am.

19 THE COURT: All right. Next question, please.

20 BY MR. JARVIS:

21 Q. You talked the other day about the default aspect of a
22 computer, right?

23 A. Specifically?

24 Q. Well, you said -- is it possible to force these pictures?
25 And you said, Yes, but not here. You can't remote in. The

Chappell - Cross by Mr. Jarvis

1 user has to have help. The default is off when it starts --
2 when it gets first sold from the manufacturer, right?

3 MS. ZACK: Objection. Mischaracterization of the
4 evidence.

5 THE COURT: Restate the question, please.

6 BY MR. JARVIS:

7 Q. Didn't you testify that when it comes from the
8 manufacturer, the default setting is off?

9 A. For what specifically?

10 Q. A computer. We're talking about forcing these pictures --

11 A. Okay.

12 Q. -- for remoting in.

13 A. Remote services?

14 Q. Yes, sir.

15 A. Okay. Yes, remote services is off by default for most
16 computer manufacturers, yes, sir.

17 Q. Okay. And then when you found Mr. Barry's computer, it had
18 the remote services in off at that point, right?

19 A. Correct.

20 Q. But it's a switch that can go on and off, correct?

21 A. Yes, sir.

22 Q. All right. So the fact that you found it in off doesn't
23 mean it was always in off -- it doesn't mean it was off in 2010
24 and 2011, does it?

25 A. But the fact that there was no recorded key logs for that

Chappell - Cross by Mr. Jarvis

1 either also indicates that it was never on. Every time it's
2 turned on, there would be something created showing that it's
3 been turned on and there would be a log of remote services.

4 Q. Are you familiar with a Web site or an app "pogo"?

5 A. No, sir.

6 Q. Okay. All right. Okay. Did you find any apps that
7 required or allowed or needed the remote access to be on, on
8 Mr. Barry's computer?

9 A. If you're referring to applications, I don't know, sir.
10 I'm not familiar with every application that's out there.
11 There's hundreds of thousands. What was on Mr. Barry's
12 computer, I'm not familiar with every single one of them. And
13 it would be extremely time-consuming, months and years to do
14 the research on each and every one of them.

15 Q. So it is possible he could have an application on his
16 computer that would require the default to be turned on? It's
17 possible, correct?

18 A. To have remote services turned on?

19 Q. Yes, sir.

20 A. Yes, there are applications that are necessary for that.

21 Q. And what is VPN?

22 A. VPN is a private network. It's a virtual private network.
23 That's where you, for lack of -- or the easiest way to explain
24 it is, you're logging into an encrypted network and it's a
25 compartmentalized connection.

Chappell - Cross by Mr. Jarvis

1 Q. Does that have anything to do with remoting into the
2 computer?

3 A. Yes, sir -- well, it can be. Not in every instance, but it
4 can be, yes, sir.

5 Q. And did you conduct any analysis of that on Mr. Barry's
6 computer --

7 A. No, sir.

8 Q. -- whether or not he had that?

9 A. No, sir.

10 Q. And is that something that's hidden?

11 A. It's not necessarily hidden, but the vast majority of VPN
12 applications have to do with school and logging into school and
13 it's not something that I would have been looking at in this
14 particular situation.

15 Q. And you understand that he's been in some type of
16 computer -- not computer, but online colleges courses for quiet
17 some time, right?

18 A. Correct. Yes, sir.

19 Q. So it's entirely conceivable he would have something like
20 that on his computer, because that's how they use it, right?

21 A. A VPN connection, yes, sir.

22 Q. Okay. All right.

23 MR. JARVIS: We'll pass the witness, Judge.

24 THE COURT: All right. Do you have much more
25 redirect?

Chappell - Cross by Mr. Jarvis

1 *MS. ZACK:* Yes, Your Honor.

2 *THE COURT:* About how much longer do you have, do you
3 think? I'm just trying to schedule the afternoon, because
4 there are several conflicting things.

5 *MS. ZACK:* Yes, I understand.

6 *THE COURT:* I'm not restricting you. You can go into
7 tomorrow. We can go to Thursday. But I just need to know some
8 idea.

9 *MS. ZACK:* 20, 30 minutes, if that.

10 *THE COURT:* That's it?

11 *MS. ZACK:* I don't know, that's the problem. I mean,
12 it could take longer.

13 *THE COURT:* Well, here's the afternoon issues.

14 *MS. ZACK:* Okay.

15 *THE COURT:* I have a conference call beginning at
16 1:00 o'clock. It's going to take some time. I have to leave
17 at 3:30. So what we could do is work until -- see if you get
18 close to finished in the next 20 to 30 minutes. If you
19 realize that you're going to take longer, we can recess for
20 lunch. My call may take an extended period. I really don't
21 know. It may not. But my guess is it will take at least until
22 2:00 o'clock. So we could recess from about 1:45 -- 12:45
23 until 2:00ish and then again at 3:30 and then resume tomorrow.
24 All right?

25 *MS. ZACK:* Thank you, Your Honor.

Chappell - Redirect by Ms. Zack

REDIRECT EXAMINATION

1
2 BY MS. ZACK:

3 Q. You were asked, Special Agent Chappell, about reviewing
4 records, school records, psychological records, correct?

5 A. Yes, ma'am.

6 Q. And you indicated that you did review those records,
7 correct?

8 A. Correct.

9 Q. What, if any, reference to nudism did you find in any of
10 those records?

11 A. None.

12 Q. And you listened to the original interviews of the
13 children, correct, both the audio and the video?

14 A. Correct.

15 *MS. MINICK:* May I ask you to speak up a little. I
16 can't hear you.

17 *THE COURT:* Use the mike.

18 *MS. ZACK:* I'm sorry. I'm sorry. Is that better?

19 *THE COURT:* Yes. Thank you.

20 *MS. MINICK:* Yes.

21 BY MS. ZACK:

22 Q. You reviewed the audio recordings and the video interviews,
23 the original ones, correct?

24 A. Yes, ma'am.

25 Q. And what references do you recall to the children

Chappell - Redirect by Ms. Zack

1 mentioning any type of nudist lifestyle or nudist activities?

2 A. None.

3 Q. And in the second interviews, those -- the two that were
4 admitted into evidence of R.B. and the one of O.B., you
5 reviewed those from June of 2013?

6 A. Yes, ma'am.

7 Q. And what reference to nudism was in there?

8 A. None, ma'am.

9 Q. And so we're clear, you were not part of the civil trial in
10 Wichita Falls, the CPS trial?

11 A. That is correct.

12 Q. You were not called as a witness?

13 A. No, I was not.

14 Q. You were not asked to prepare exhibits?

15 A. No, I was not.

16 Q. And other than looking through a transcript that was
17 received a few weeks ago, you have no knowledge of that trial?

18 *MR. JARVIS:* Objection. Leading.

19 *THE COURT:* Refrain from leading, please.

20 BY MS. ZACK:

21 Q. Who is the unknown chatter in Exhibit 7?

22 A. I have no idea, ma'am.

23 Q. Do you know about whether the person is one individual or
24 several individuals?

25 A. For each of the conversations, it appears to be one

Chappell - Redirect by Ms. Zack

1 individual, but as a whole, I don't know if it's one or more
2 different people for all the various times unknown appears.

3 Q. Okay. And what evidence do you have that -- what, if any,
4 evidence do you have as to whether or not Mr. Noonan told
5 Mr. Barry he was a sex offender?

6 A. I don't have any, no, ma'am.

7 Q. And you were asked about the online identity of Mr. Barry,
8 correct?

9 A. Correct.

10 Q. And I believe you said that occasionally law enforcement
11 asks permission to assume online identities, correct?

12 A. Correct.

13 Q. You don't know whether or not that law enforcement
14 officer -- or do you know whether or not that law enforcement
15 ever used that identity?

16 A. I have no idea, no, ma'am.

17 Q. Let's talk about the file paths. I believe you were just
18 asked a hypothetical, if -- I believe the hypothetical was --
19 so that we're talking about the same things -- if Mr. Noonan
20 and Mr. Barry's computers were both at Mr. Noonan's house and
21 Mr. Noonan and Mr. Barry and the boys were there, that any one
22 of those four people could have put the pictures from
23 Mr. Noonan's camera onto Mr. Barry and Mr. Noonan's computer.
24 That was the hypothetical?

25 A. Correct.

Chappell - Redirect by Ms. Zack

1 Q. Okay. And your response was, "It's possible"?

2 A. Correct.

3 Q. What evidence do you have as to the computer skills of

4 R.B.?

5 A. I have none.

6 Q. And O.B.?

7 A. I have none.

8 Q. And these are at the time 5 and 7-year-olds, correct?

9 A. Correct.

10 Q. And based on what you know forensically of the file paths
11 of the pictures on Mr. Barry's computer, what would the user
12 have had to do to put those files in those folders?

13 A. The folder -- the root folders within the owner account
14 that we've referred to as "Craig Houston" and "David and the
15 boys," those folders would have had to have been created in the
16 first place, meaning the typical way it's taught to do it is
17 you right click within the open window, select "new," select
18 "folder." A new folder pops up and then you type in the name.
19 And I believe that is because some of the pictures within these
20 folders still have the default file name that is assigned to
21 that file by the camera.

22 Q. Okay.

23 A. Some of those same pictures, then, have a different name,
24 meaning they've been renamed, which, again, is -- takes
25 knowledge on how to do that.

Chappell - Redirect by Ms. Zack

1 Q. And the process that you just described, what do you know
2 about a 5 or a 7-year-old's ability to save these pictures in
3 the way that they were saved on Mr. Barry's computer?

4 MR. JARVIS: Objection, Judge. It's outside his
5 expertise.

6 THE COURT: If he knows, he can answer. If he doesn't
7 know, he can say that.

8 A. Most of the kids that I've been around that age, using
9 computers, are not that knowledgeable.

10 BY MS. ZACK:

11 Q. What I'm asking is, that's a fairly sophisticated process?

12 A. Yes, sir -- yes, ma'am.

13 Q. Okay. And what evidence do you have that any of the
14 children ever did anything on Mr. Barry's or Mr. Noonan's
15 computer?

16 A. Very little.

17 Q. Now, 24b the picture in the upper right-hand corner --

18 A. Yes, ma'am.

19 Q. -- that picture has been found in many different places,
20 correct?

21 A. That is correct.

22 Q. Okay. And it's been suggested that you have no evidence
23 that Mr. Barry took that picture, correct?

24 A. That is correct.

25 Q. What evidence do you have that Mr. Barry didn't take that

Chappell - Redirect by Ms. Zack

1 picture?

2 A. I don't have any evidence of that either.

3 Q. Now, let's talk about the camera. That was Mr. Noonan's
4 camera that took that picture?

5 A. Correct, the Casio.

6 Q. And you've examined that camera?

7 A. Yes, ma'am.

8 Q. And what can you tell us about the timer mechanism on that
9 camera?

10 A. It's a software-based timer, meaning he has to access it
11 through the menu.

12 Q. Okay. So does that mean it's not just a button that says
13 "timer"?

14 A. That is correct.

15 Q. Okay. And what would someone have to know in order to do
16 that?

17 A. To get in -- how to get into the menu, first off, select
18 the appropriate setting, adjust the setting for the multiple --
19 the timer setting, turn it on and then the multiple settings
20 within it, because there are several second delay type
21 settings, and then set it to that and then actually take the
22 picture.

23 Q. So this is a several-step process?

24 A. Correct.

25 Q. Okay. And what evidence do you have that either of these

Chappell - Redirect by Ms. Zack

1 children had the technological capability or the skills in
2 order to set a timer that sophisticated on a camera?

3 *MR. JARVIS:* Again, Judge, I'm going to have to
4 object. Based on the notice that the Government gave me, it's
5 not in his realm of expertise to talk about the boys.

6 *THE COURT:* The question -- well, he is an expert on
7 the level of skills required. He's also being asked a question
8 simply about the evidence that he has. He can answer the
9 question of whether he's aware of any information, evidence
10 that would enable him to answer the question.

11 And, number two, I think your own opening
12 statement said that these children were developmentally
13 disabled. And I'm not sure how that ties in to this, and that
14 would be a question that I would ask, in terms of simply the
15 level of both expertise and skill required to perform these
16 operations. So it's really a question about the level of skill
17 and expertise required, and he is knowledgeable about that.

18 *MR. JARVIS:* And, Judge, if I may, I agree with you,
19 except he's not knowledgeable about the level of experience a
20 5, 6, or 7-year-old boy has though.

21 *THE COURT:* He is familiar -- I mean, those are
22 sufficiently within common information -- lay information that
23 he can give that answer as based on his expert information as
24 to the level of skill required to do this and the complexity of
25 the operation.

Chappell - Redirect by Ms. Zack

1 You may answer the question.

2 A. Can you repeat the question?

3 *THE COURT:* Repeat it.

4 BY MS. ZACK:

5 Q. Based on the steps that you've just described, what type
6 of capabilities would be needed by an individual or how
7 difficult would it be for a 5 or 7-year-old to set the timer on
8 Mr. Noonan's camera?

9 A. I believe that they would have to definitely be shown
10 exactly what a timer is and what its function is and how to get
11 to it. I mean, I don't think that this is something that they
12 would have stumbled on and figured out that this is what it's
13 for.

14 Q. And what evidence, if any, did you find forensically that
15 the children took any of the pictures?

16 A. None.

17 Q. Now, let's talk about this camera, this Casio camera.
18 Digital camera, correct?

19 A. Correct. Yes, ma'am.

20 Q. And when you look at the back of Government's Exhibit 8,
21 there's a big screen there; is that correct?

22 A. Correct.

23 Q. Okay. So a traditional camera you would have to look
24 through that little hole --

25 A. Correct.

Chappell - Redirect by Ms. Zack

1 Q. -- to see what was going to be on the picture?

2 A. Correct.

3 Q. But on a digital camera, you look at the screen?

4 A. You can, yes.

5 Q. Okay. And you were asked was it possible, based on the way
6 the pictures were taken, that a child took the picture because
7 of the height and the angle of the picture, correct?

8 A. Correct.

9 Q. Is it possible that an adult took the picture but was
10 holding it down in front of them with their arms extended,
11 looking at the big screen on the back?

12 A. That's possible, yes, ma'am.

13 Q. And are pictures commonly taken that way now with these new
14 digital cameras, because you can see what the picture is going
15 to actually be before you take it?

16 A. Yes, ma'am.

17 Q. Now, let's look at 4c. There was discussion of this
18 picture and that it was not sexually suggestive, not that you
19 said that, but that it was suggested to you that it was not
20 sexually suggestive. What, if anything, does an adult male's
21 mouth on the neck of a child suggest to you?

22 MR. JARVIS: Judge, we are going to object. That's
23 not in the picture.

24 THE COURT: The picture is in evidence. You can
25 rephrase the question to be a little more precise about what

Chappell - Redirect by Ms. Zack

1 the visual evidence is in the picture as to the relationship of
2 the adult's mouth and the child's neck.

3 BY MS. ZACK:

4 Q. What, if anything, do you find sexually suggestive about
5 the location of Mr. Noonan's face to the neck of the boy?

6 A. It does look close to me to the neck area. His hand is on
7 top of the head, thereby exposing the side of the neck from
8 the shoulder. And it does to me just first looking at the
9 picture and the first time I saw the image, looked to me like
10 Mr. Noonan was -- had his mouth against his neck.

11 Q. Now, in the evidence that you reviewed, the forensic
12 evidence, the cameras, all of that, you found pictures on
13 Mr. Barry's computer of the children naked, correct?

14 A. Correct.

15 Q. Pictures of the children naked on Mr. Noonan's computer,
16 correct?

17 A. Correct.

18 Q. And pictures of the children naked in Mr. Barry's camera,
19 correct?

20 A. Correct.

21 Q. And in Mr. Noonan's camera?

22 A. Correct.

23 Q. Now, what evidence were you given or were you informed of
24 from the search of Mr. Barry's house about pictures of the
25 children naked being displayed in the home?

Chappell - Redirect by Ms. Zack

1 A. I didn't have any information for that.

2 Q. Would that be something that would have been looked for by
3 the search team?

4 A. Or they would have seen it --

5 MR. JARVIS: Objection. Speculation.

6 THE COURT: Are you asking about the ordinary
7 procedures that they would follow?

8 MS. ZACK: Yes.

9 THE COURT: I'll allow that.

10 A. Yes, that's something that they would have noticed and
11 looked for, yes, ma'am.

12 BY MS. ZACK:

13 Q. Would it have been documented as part of that process?

14 A. I believe so, yes, ma'am.

15 Q. So what evidence, other than Mr. Barry using the term
16 "nudist," do you have to suggest that Mr. Barry is a nudist or
17 practices a nudist lifestyle?

18 A. Only what his comments in the chats that I recovered and a
19 few of the search terms that related to True Nudist and Lone
20 Star Nudist Resort.

21 Q. What evidence was found in his home to suggest that?

22 A. I don't believe any was found.

23 Q. And other than the painting pictures contained in
24 exhibit -- I believe it's 9, but let me double-check, yes, in
25 exhibit -- not Exhibit 9, I'm sorry. In 20, in Exhibit 20,

Chappell - Redirect by Ms. Zack

1 other than 20e, f, and g, those were the only nude pictures of
2 the boys you found on Mr. Barry's camera, correct?

3 A. That is correct.

4 Q. And did you find any nude pictures of the boys on
5 Mr. Barry's computer that weren't contained on either
6 Mr. Noonan's camera or in Mr. Noonan's computer?

7 A. Can you repeat that again? I'm sorry, ma'am.

8 Q. Sure. Other than those three pictures, did you find any
9 pictures of the boys naked on Mr. Barry's computer that were
10 not in Mr. Noonan's computer or Mr. Noonan's camera?

11 A. Yes, ma'am. There's several -- if I'm understanding the
12 question correctly, there are images on Mr. Barry's computer
13 that are not on Mr. Noonan's.

14 Q. Okay. That were taken somewhere other than Mr. Noonan's
15 home?

16 A. Oh, no, ma'am. No, ma'am. Okay. I understand. No,
17 ma'am.

18 Q. Okay. So there were no pictures found on Mr. Barry's
19 computer of his children naked other than ones taken at
20 Mr. Noonan's home; is that correct?

21 A. And the unknown location.

22 Q. Right.

23 A. Correct.

24 Q. And you're talking -- when you say that, you're talking
25 about the pool picture?

Chappell - Redirect by Ms. Zack

1 A. And the one on the couch with the yellow wall behind it.

2 Q. Okay. And that's the picture of the four of them?

3 A. Correct.

4 Q. Mr. Noonan, Mr. Barry, and the two children?

5 A. Yes, ma'am.

6 Q. Okay. That's picture 4a actually, correct?

7 A. Correct.

8 Q. Okay.

9 THE COURT: It doesn't seem that you're anywhere near
10 the end of your --

11 MS. ZACK: No.

12 THE COURT: All right. Let's recess now until 2:00
13 o'clock. If it looks like it's going to be much longer than
14 that, I will arrange to have you notified here in the
15 courtroom. I'll try to minimize the inconvenience to you, but
16 I really don't have any control over what the afternoon
17 schedule is going to look like, sadly. So we do need to plan
18 on tomorrow morning as well --

19 MS. ZACK: Yes, Your Honor.

20 THE COURT: -- at least.

21 MR. JARVIS: Do you want us to give our cell phone to
22 your clerk so they can track us down?

23 THE COURT: Sure. That will be fine. Thank you very
24 much.

25 (Lunch recess from 12:40 p.m. to 2:00 p.m.)

Chappell - Redirect by Ms. Zack

1 *(Open court, Defendant present.)*

2 *THE COURT:* Are we ready?

3 *MS. ZACK:* Yes, Your Honor.

4 *THE COURT:* You may be seated, sir.

5 Okay. You may proceed.

6 *MS. ZACK:* Thank you, Your Honor.

7 **REDIRECT EXAMINATION CONTINUED**

8 BY MS. ZACK:

9 Q. Okay. The images -- there are a number of images that
10 Mr. Barry does not appear in; is that correct?

11 A. Yes, ma'am.

12 Q. And I believe you were asked if it was possible if those
13 pictures could have been taken by a child, a timer, or another
14 adult; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. And what evidence do you have that Mr. Barry didn't
17 take those pictures?

18 *MR. JARVIS:* Objection. Not relevant.

19 *THE COURT:* Overruled.

20 A. I have no evidence that he did not take the pictures.

21 BY MS. ZACK:

22 Q. And what evidence in your investigation uncover that showed
23 Mr. Barry was anywhere other than with his children while he
24 was in Houston?

25 A. I have no evidence that he was anywhere else other than at

Chappell - Redirect by Ms. Zack

1 Mr. Noonan's.

2 Q. In the chats there's a discussion about being careful about
3 sending pictures. Do you recall that chat?

4 A. Yes, ma'am.

5 Q. What did that mean to you, based on your training and
6 experience?

7 A. To basically be careful, because sending the images and
8 stuff are illegal and getting caught.

9 Q. And what did it tell you about the knowledge of the
10 individuals talking about that?

11 A. Well, that statement implied that they knew that it's
12 illegal to send the pictures.

13 Q. Now, 4p -- can we look at 4p? What does it appear the
14 children are doing in that picture?

15 A. It appears they're sleeping.

16 Q. Okay. What, if any, evidence do you have that they aren't
17 asleep?

18 A. None, other than the appearance there.

19 Q. Okay. And it was suggested that the children may have
20 taken this picture with a timer, correct?

21 A. Yes.

22 Q. That was suggested?

23 A. Yes, ma'am.

24 Q. Okay. What evidence do you have that Mr. Barry didn't take
25 that picture?

Chappell - Redirect by Ms. Zack

1 A. I don't have any evidence that he did not take it.

2 Q. And let's talk about this picture. I believe there was a
3 discussion about posing children in general, correct?

4 A. Correct, yes, ma'am.

5 Q. Okay. And based on your training and experience, does
6 something have to be posed in order to be child pornography?

7 A. No, ma'am.

8 Q. Can children acting like children be the subject of child
9 pornography even if they're unaware of the fact that they're
10 being photographed?

11 A. Yes, ma'am.

12 Q. What -- in reference to many of these pictures, would you
13 agree that many were taken in the bedroom of Mr. Noonan and in
14 the bathroom of Mr. Noonan's house?

15 A. Yes, ma'am.

16 Q. When you were questioned about whether there's anything
17 sexually suggestive about the pictures in the bedroom or the
18 bathroom, what makes a bedroom a sexually suggestive location?

19 A. Any number of things, to include whether or not the persons
20 in the room are nude. A bedroom is a place commonly known
21 where sex occurs.

22 Q. And bedrooms and bathrooms, would you agree nudity is often
23 associated with those rooms?

24 A. Yes, ma'am.

25 Q. What, if anything, would you say being a nudist has to do

Chappell - Redirect by Ms. Zack

1 with being naked in a bedroom or a bathroom?

2 A. I wouldn't.

3 Q. And when you were doing these searches, I know that
4 Mr. Jarvis asked you if you did a query as to search terms used
5 by Mr. Barry on his computer, correct?

6 A. Yes, ma'am.

7 Q. Okay. And I believe he suggested to you that Mr. Barry had
8 been to the True Nudist site thousands of times?

9 A. Yes, ma'am.

10 Q. Okay. Did you specifically look for any time period and
11 chart how many times Mr. Barry went to the True Nudist site?

12 A. Yes, ma'am.

13 Q. Okay. So between September 5th of 2010 and February 6th of
14 2011, were you able to determine how many times approximately
15 Mr. Barry went to the True Nudist Web site?

16 A. Yes, ma'am.

17 Q. Approximately how many?

18 A. Over 500.

19 Q. Over 500, and that's in a six-month period?

20 A. Correct.

21 Q. So would you agree that that's --

22 *MR. JARVIS:* Objection. I'm sorry, but that's
23 leading.

24 BY MS. ZACK:

25 Q. How many times a day, approximately, would that mean

Chappell - Redirect by Ms. Zack

1 Mr. Barry was going to the True Nudist Web site?

2 A. Two to three times a day.

3 Q. For six months straight?

4 A. Correct.

5 Q. And what was on this Web site, based on your investigation?

6 A. Basically it's a social network. There's a forum where you
7 can pose a question. It's not live, where you pose a question
8 and people can answer it and respond and then you go back and
9 check that response. There's live chat. There's profiles
10 where people provide their names or whatever they want to post
11 about themselves, pictures, and then you can contact these
12 people and you can chat with them.

13 Q. What did Mr. Barry's profile say?

14 A. I was not able to find Mr. Barry's profile.

15 Q. Do you have to have a profile in order to participate in
16 the nonpaid portion of True Nudist?

17 A. Yes, ma'am.

18 Q. And who controls the profile?

19 A. The company that runs True Nudist and their servers.

20 Q. I phrased that inarticulately. Who decides what goes on in
21 one's profile?

22 A. Well, the person who creates their profile puts in what
23 they want other people to know.

24 Q. Okay. And if someone creates a profile, can they also
25 delete their profile?

Chappell - Redirect by Ms. Zack

1 A. Yes, ma'am.

2 Q. Now, would you say, based on your training and experience,
3 we're talking about sexual places, like a bedroom, correct?

4 A. Yes, ma'am.

5 Q. Okay. Or places associated with sexual activity. Are beds
6 associated with sexual activity?

7 A. Yes, ma'am.

8 Q. So the fact that someone has a bed in a living room, that
9 could be something that you would pay attention to as an
10 investigator?

11 A. Yes, ma'am.

12 Q. And there was no evidence that the children slept anywhere
13 other than in Mr. Noonan's bedroom?

14 A. That is correct.

15 Q. Or that Mr. Barry slept anywhere other than Mr. Noonan's
16 bedroom?

17 A. Correct.

18 Q. What evidence do you have that -- well, let's do it this
19 way: 4w, can we look at that? This picture you said, based on
20 Government's Exhibit 30, was created twice or has two creation
21 dates on Mr. Noonan's -- I'm sorry, Mr. Barry's computer,
22 correct?

23 A. Correct.

24 Q. And what does that tell you about this picture?

25 A. That the user of the computer moved it and renamed it.

Chappell - Redirect by Ms. Zack

1 Q. Okay. And based on what you know about computers and how
2 that process would have to work, what is your opinion as to
3 whether or not a 5 or 7-year-old is capable of doing that?

4 A. Depending on their ability to read and write, first off,
5 and be able to type "David and the boys," which is what this
6 file name is, and then given how you have to rename a file, I
7 would say it's highly unlikely.

8 Q. And what does the fact that it was created twice tell you
9 as far as how often or whether it was viewed once it was put
10 there?

11 A. In all probability the user had knowledge of the file and
12 viewed the file at least once before copying it.

13 Q. Because it had to be copied or moved to the second place,
14 correct?

15 A. Correct.

16 Q. And 4v and 4w are the same image or part of the same group
17 of pictures, correct?

18 A. Correct.

19 Q. Okay. And the creation dates on there show what dates
20 originally?

21 A. 4v, the first creation date was on June 1st of 2010.

22 Q. And that what was in the "Craig Houston" folder?

23 A. Correct. With the file name that is the same as the
24 default, file name assigned by Mr. Noonan's camera.

25 Q. And then the second time it was created?

Chappell - Redirect by Ms. Zack

1 A. Was on June 18th of 2010.

2 Q. And what file folder did it ultimately end up in there?

3 A. In "David and the boys" with the ampersand, and then it was
4 named "David and the boys" spelling out "and," 009 dot jpeg.

5 Q. So what does this tell you about Mr. Barry's knowledge of
6 his children being photographed naked?

7 A. It lends me to believe that he had knowledge that his
8 children were photographed and he had acknowledged of this
9 image and moved it and renamed it and saved it.

10 Q. Prior to returning to Mr. Noonan's house?

11 A. Correct.

12 Q. At least once, if not twice?

13 A. Correct.

14 Q. Premised on the fact that there were three trips?

15 A. Correct.

16 Q. Beginning of June, approximately two weeks later, and then
17 December?

18 A. And then again in December, correct.

19 Q. And let's talk about 4g. When was that created on
20 Mr. Barry's computer?

21 A. On January 1st, 2010 -- I'm sorry, correction, June 1st,
22 2010.

23 Q. And what does that tell you -- and which folder was that
24 in, sorry?

25 A. This was in "Craig Houston."

Chappell - Redirect by Ms. Zack

1 Q. And what does that tell you about Mr. Barry's knowledge of
2 his children being photographed with Mr. Noonan?

3 A. The -- well, with the other images, again, this one being
4 taken in June 1st and placed in "Craig Houston," I mean, he --
5 with the other images, it tells me that he had to have
6 knowledge, based on the fact that he's traveled there two other
7 times after this one was placed on his computer.

8 Q. And what does the fact that these files existed at all tell
9 you about Mr. Barry's knowledge of his children being
10 photographed?

11 MR. JARVIS: Judge, we're going to object. That calls
12 for speculation and outside his area of expertise, given the
13 notice.

14 THE COURT: I think it's within the areas you asked
15 about. I'm going to allow it.

16 A. If Mr. Barry objected to any of the photographs or images
17 that he had -- that I believe he had knowledge of, he obviously
18 didn't delete them and in some cases he's copied them and moved
19 them to other folders that he named more aptly to what they
20 were as a reminder of where they were and who they were with
21 and, again, going back to the fact that he's visited Mr. Noonan
22 three times.

23 BY MS. ZACK:

24 Q. What other evidence do you have that Mr. Barry is not
25 opposed to people taking pictures of his children? Was there

Chappell - Redirect by Ms. Zack

1 other forensic evidence of that?

2 A. Yes, ma'am. There's two separate things. One, we have the
3 pictures where it shows Mr. Noonan and Mr. Barry being
4 photographed and Mr. Barry is either handing the child a camera
5 or the camera is being -- or he's handing the child to -- the
6 camera to a child or the child is handing the camera to
7 Mr. Barry. So obviously they know they're getting
8 photographed.

9 Q. Are you referring to 9a?

10 A. Correct.

11 MS. ZACK: Can we go to 9a, please?

12 A. Correct. So obviously he has knowledge that photographs
13 are being taken and the children are around.

14 BY MS. ZACK:

15 Q. I want to talk about 9a real quick.

16 A. Okay.

17 Q. 9a is a picture of Mr. Noonan and Mr. Barry in Mr. Noonan's
18 bed, naked, sitting right up next to each other, touching side
19 by side, correct?

20 A. Correct.

21 Q. And how would you characterize this image in regards to is
22 it casual, is it intimate, is it --

23 A. In my opinion, it's an intimate knowledge of each other,
24 that this is a close relationship.

25 Q. Okay. And in this image there is a child's arm holding a

Chappell - Redirect by Ms. Zack

1 camera, correct?

2 A. Correct.

3 Q. And the camera being held in that picture is Government's
4 Exhibit 26, correct?

5 *MR. JARVIS:* Judge, we're going to have to object to
6 continued leading.

7 *THE COURT:* I'll sustain the objection.

8 BY MS. ZACK:

9 Q. I'm sorry. What camera appears in image 9a?

10 A. That would be Mr. Barry's camera --

11 Q. Okay.

12 A. -- which is the Kodak camera.

13 Q. Okay. Government's Exhibit No. 26?

14 A. Correct.

15 Q. Okay. And when asked what evidence you had of Mr. Barry's
16 knowledge of pictures being taken involving his children
17 potentially in all these pictures, this is one of the images
18 that leads you to believe he had knowledge, is that what you
19 had said?

20 *MR. JARVIS:* Objection. Leading.

21 *THE COURT:* I'll sustain the objection.

22 BY MS. ZACK:

23 Q. What in this picture makes you believe Mr. Barry has
24 knowledge?

25 A. The exchange of the camera between Mr. Barry and the child,

Chappell - Redirect by Ms. Zack

1 whichever direction it's going, of Mr. Barry's camera. Then
2 finding on Mr. Barry's camera, his Kodak camera, an image that
3 is very similar to this picture at just a slightly different
4 angle, taken by someone, which I believe and taken within a
5 short time of this picture being taken.

6 Q. Are you referring to Government's Exhibit 20c?

7 A. Correct.

8 MS. ZACK: Can we see that, please?

9 BY MS. ZACK:

10 Q. Now, when you reviewed Mr. Barry's computer, what did you
11 find -- what evidence on there did you find that that computer
12 was used by anybody else?

13 A. Very little. There were some programs that were child
14 related, but the vast majority of the information that I found
15 seems to be related to David Barry.

16 Q. And I asked you what, if any, pictures were found in the
17 Barry home that related to nudism?

18 A. Correct.

19 Q. And what was your answer?

20 A. None.

21 Q. What books or videos or anything was found in the Barry
22 home relating to nudism?

23 A. My understanding is none.

24 Q. And what, if anything, was found relating to nudism and
25 child rearing?

Chappell - Redirect by Ms. Zack

1 A. None.

2 Q. Where -- or what pictures were found of Mr. Peterson with
3 the children naked?

4 A. None.

5 Q. And what pictures were found with Mr. Peterson and
6 Mr. Barry naked?

7 A. None.

8 Q. Let's talk about the chats briefly. In 7e there is a chat
9 about an individual coming to visit, correct, line -- well, the
10 entire chat in general is talking about visits?

11 A. Correct.

12 Q. And in the first part, in 7455 -- well, let's start at
13 7453. Mr. Barry sends a picture to a third party, correct, to
14 nudemac?

15 A. Correct.

16 Q. And we know that that picture involved nude images based on
17 line 7455?

18 A. Correct.

19 *MR. JARVIS:* Objection. Continued leading, Judge.

20 BY MS. ZACK:

21 Q. What do we know about that picture based on the response in
22 7455?

23 A. I believe that it's a nude picture sent by Mr. Barry,
24 because of the statement that nudemac makes about be careful
25 about sending naked pics of kids. It's illegal.

Chappell - Redirect by Ms. Zack

1 Q. And earlier -- well, let me ask it this way: Besides the
2 image file folders and the creation dates that you've talked
3 about, what other evidence do you have that Mr. Barry was using
4 the Internet to send or receive nude images of children?

5 A. By the Messenger cache, the Windows Messenger cache, which
6 had graphic files inside of it, meaning that those graphic
7 files had to have been -- were rendered using or sent or
8 received using an Instant Messenger program, particularly MSN
9 chat.

10 Q. And what is the likelihood that images would show up in the
11 Instant Messenger cache on two separate dates by accident?

12 A. It wouldn't unless the sender sent them accidentally, but
13 it wouldn't.

14 Q. So when we're talking about 4aa through gg and we look at
15 the creation dates, and I'm talking about in Government's
16 Exhibit 30, a lot of those were created on 11-20, correct?

17 A. Correct.

18 Q. But 4cc was created on 12-18?

19 A. Correct.

20 Q. And what does that tell you forensically?

21 A. Well, separate and apart from the other pictures and when
22 they were sent or received, it was a separate message.

23 Q. And you were asked if Mr. Barry ever looked at these
24 pictures. What do you know as far as what would have appeared
25 and why do we have these thumbnails?

Chappell - Redirect by Ms. Zack

1 A. Correct. The -- when the Window Messenger program is
2 opened on the desktop, you have a dialogue box. Within that
3 dialogue box is the contents of the chat that is occurring, the
4 text that's being sent back and forth, the words. When a user
5 sends another user a picture or a graphic file, that picture
6 will be rendered within that dialogue box and viewable by the
7 other person.

8 Q. And what do you know about -- you said that the creation
9 date shows you when something got on the computer the first
10 time?

11 A. Correct.

12 Q. Are the times here accurate as well, meaning in 4cc, it
13 says "12-18-2010" and then it says "2:53:16 p.m."?

14 A. On 4cc?

15 Q. Yes.

16 A. I'm sorry, I was looking at the wrong one.

17 Q. In Exhibit 30, Government's Exhibit 30.

18 A. That's correct.

19 Q. Okay. Is that time accurate and reliable forensically?

20 A. Yes, ma'am.

21 Q. Okay. So then let's discuss 4aa was created on
22 November 20th, correct?

23 A. Correct.

24 Q. What time?

25 A. 6:50 and 3 seconds p.m.

Chappell - Redirect by Ms. Zack

1 Q. And what about 4bb?

2 A. That was at 4:30:12 p.m.

3 Q. And that's almost a two-and-half-hour difference?

4 A. Correct.

5 Q. What does that tell you forensically about how these
6 pictures were received by Mr. Barry?

7 A. That it was part of a separate and distinct chat from when
8 the other one was sent -- or conversation, should I say.

9 Q. Okay. Because it was two and half hours later?

10 A. Correct.

11 Q. And then potentially 4bb -- I'm sorry, 4aa and 4dd could
12 have been part of the same chat?

13 A. Correct.

14 Q. And whereas 4ee and 4bb may have been part of the same
15 chat?

16 A. And 4ff, yes, ma'am.

17 Q. Okay. So from this, approximately how many different
18 distinct chats with these images do you believe there were?

19 A. Three.

20 Q. On two separate dates?

21 A. Yeah, on this one date. There were three separate chats --
22 I'm sorry. Two separate chats on this one day and a third chat
23 on a different day, on December 18th.

24 Q. And what is the likelihood that those pictures ended up at
25 three separate times on two separate dates on Mr. Barry's

Chappell - Redirect by Ms. Zack

1 computer and Instant Messenger cache by accident?

2 A. I believe it's unlikely.

3 Q. Chat 7e, line 7475, what does that line say?

4 A. "Well, you can see them live when you come to visit."

5 Q. And who's the speaker there or the sender?

6 A. Mr. Barry.

7 Q. And what is he talking about seeing live?

8 A. I believe he is referring to the children, telling the
9 nudemac, about nudemac visiting the children in person.

10 Q. And can you tell us what is normal about an adult male
11 discussing his children's penises with other adult males?

12 *MR. JARVIS:* Objection, Judge. That's out of his area
13 of expertise as provided by the notice by the Government?

14 *THE COURT:* Response?

15 BY MS. ZACK:

16 Q. In the context, Special Agent Chappell, of your
17 investigation into individuals with a sexual interest in
18 children.

19 *THE COURT:* I'll allow it.

20 A. There's very little normal about it. Nothing is normal
21 about it.

22 BY MS. ZACK:

23 Q. And in your capacity as a forensic investigator, do you
24 examine computers that don't have child pornography on them?

25 A. Yes, ma'am.

Chappell - Redirect by Ms. Zack

1 Q. And how often do you find chats on those computers about
2 nude children and their penises?

3 A. I can say that I've never found a chat related to that on a
4 non-CP computer.

5 Q. In 7m, line 30421, who is speaking in that line?

6 A. Mr. Barry.

7 Q. And what is the conversation about up into that point in
8 general?

9 A. Male -- or penal erection and masturbating.

10 Q. And what does Mr. Barry tell unknown in line 30421?

11 A. "Have seen me hard and leaking precum, always leak when
12 hard."

13 Q. You indicated that when you forensically examined the
14 computer, you were able to determine that Mr. Barry used Skype;
15 is that correct?

16 A. That's one of the programs, yes, ma'am.

17 Q. Okay. And what other video chat programs did you find,
18 what, if any?

19 A. That was the only one.

20 Q. Okay. And what do --

21 A. Well, let me preface that. That was the only one that's
22 specifically linked to video. MSN Live Instant Messenger,
23 Yahoo Instant Messenger, both have video chat features built
24 in. They're primarily text chatting, but they have that as
25 well.

Chappell - Recross by Mr. Jarvis

1 Q. Okay. Were both of those programs on his computer?

2 A. Yes, ma'am.

3 Q. Okay. But you had indicated -- well, let me ask it this
4 way: Why don't we have the Skype chats?

5 A. By default, Skype when you install Skype, the video
6 sessions are not saved. That is something that a user has to
7 go in and ask for it to save and have Skype actually save those
8 files to a user specific folder.

9 Q. And where in any of the forensic analysis that you did, did
10 you find any admonition by Mr. Barry to Mr. Noonan not to
11 photograph his children?

12 A. None.

13 Q. And where did you find any evidence that Mr. Barry would
14 refuse people who wanted to photograph his children naked?

15 A. None.

16 MS. ZACK: Can I have a moment, Your Honor?

17 THE COURT: You may.

18 MS. ZACK: No further questions for this witness, Your
19 Honor.

20 THE COURT: All right. Thank you.

21 Any recross?

22 MR. JARVIS: Thank you, Judge. Just a few.

23 **RECROSS-EXAMINATION**

24 BY MR. JARVIS:

25 Q. You told Ms. Zack that there's nothing in the original

Chappell - Recross by Mr. Jarvis

1 forensic videos or in the school records about nudism, correct?

2 A. Correct.

3 Q. Did you see anybody ask that question?

4 A. No, sir, I don't believe it was brought up.

5 Q. It's probably not something 5, 6, 7-year-old boys are going
6 to be shouting out to their teachers, "We walk around home
7 nude," right?

8 MS. ZACK: Objection. Calls for speculation.

9 THE COURT: I'll sustain the objection.

10 A. Specifically -- I'm sorry.

11 THE COURT: Well, wait for the next question.

12 THE WITNESS: I'm sorry. I'm sorry. Yes, ma'am.

13 THE COURT: Thank you.

14 BY MR. JARVIS:

15 Q. So if nobody asked them about it, it's not unusual that
16 they wouldn't be saying it. Would that be a fair statement?

17 A. It's possible, yes, sir, if no one asked it.

18 Q. They might not even know what the term "nudism" is.

19 MS. ZACK: Objection. Once again, calls for
20 speculation.

21 THE COURT: I'll sustain the objection.

22 BY MR. JARVIS:

23 Q. Do you recall reviewing the interview Mr. Barry had with
24 Detective Jones?

25 A. A little bit, yes, sir.

Chappell - Recross by Mr. Jarvis

1 Q. And it was definitely discussed in that interview, wasn't
2 it?

3 A. Yes, sir.

4 Q. So that was a week after the search warrant was executed in
5 2011, and so we know that that was discussed and that was
6 Mr. Barry's position at least at that time, correct?

7 MS. ZACK: Objection. Calls for a response based on
8 hearsay.

9 THE COURT: Mr. Barry's response, so I'll allow it.
10 I'll allow just the answer to the question.

11 BY MR. JARVIS:

12 Q. Isn't that true?

13 A. Correct.

14 Q. Okay. And then you talked a little bit about 5, 6,
15 7-year-olds not being able to handle the timer apparatus or
16 sequence of events, correct?

17 A. Correct.

18 Q. Okay. Well, you're aware, though, that there's math and
19 reading software and marketing now for preschoolers, 3 to
20 5-year-olds?

21 A. Yes, sir.

22 Q. And kindergartners?

23 A. Correct.

24 Q. And kids, once you show them something, they're pretty
25 smart on these new electronic devices, unlike old people like

Chappell - Recross by Mr. Jarvis

1 me, right?

2 A. For the specific task that they're shown typically, yes.

3 Q. And how do we know Mr. Noonan didn't show them how to
4 operate the camera?

5 A. I don't, sir.

6 Q. So it's not a difficult task. You just have to have
7 somebody show you the two or three steps and boom, it's done,
8 right?

9 A. And explain what it is, correct, yes, sir.

10 Q. Okay. So you don't have any evidence that that didn't
11 happen, right?

12 A. No, sir, I do not.

13 Q. And we know that the timer was used at least a couple of
14 times for sure, because all four of them are in the same
15 picture?

16 *MS. ZACK:* Objection. Calls for speculation.

17 *THE COURT:* Sustained.

18 BY MR. JARVIS:

19 Q. You had a number of how many times somebody went on
20 Mr. Barry's computer and went to truenudism.com from 9-5-10 to
21 2-6-11, correct?

22 A. Correct.

23 Q. Did you find his first time to go to truenudism.com?

24 A. No, sir.

25 Q. Were you not looking for that?

Chappell - Recross by Mr. Jarvis

1 A. No, sir. These are Internet cookie files that are
2 volatile. They are constantly overwritten, deleted,
3 overwritten, deleted, as you use through the Web browser,
4 whether it's a Mozilla Firefox, Chrome, Google Chrome, or
5 whatever.

6 The first instance I was able to find true
7 nudism, with him visiting, was 9-6 of 2010.

8 Also, let me say, your Internet history file
9 folder is set to a default size; and when it gets to that size,
10 it will start deleting and overwriting stuff. So that also
11 leads to why there may not be records going further back than
12 what I found.

13 Q. So you would agree with me it's entirely possible that he
14 visited before September 2010? You just couldn't find them?

15 A. Correct. Yes, sir.

16 Q. Okay. And then there was a question about there's no
17 evidence that Mr. Barry was anyplace else other than Craig
18 Noonan's house. Do you remember saying that?

19 A. Correct.

20 Q. Well, going back to the interview with Detective Jones,
21 Mr. Barry said at that time that he went to a job fair. Do you
22 remember that?

23 MS. ZACK: Objection. Calls for a response based on
24 hearsay and commenting on items not in evidence.

25 THE COURT: I'm going to allow the question. This is

Chappell - Recross by Mr. Jarvis

1 a bench trial. I can sort out the information that shouldn't
2 be considered. But for the moment I think it's -- since it's
3 part of the evidence, I'm going to hear it.

4 BY MR. JARVIS:

5 Q. Do you remember Mr. Barry saying that he left to go to a
6 job fair and left the boys with Mr. Noonan?

7 A. Correct.

8 Q. Okay. So there is evidence that he was someplace else
9 other than Mr. Noonan's house, at least for a short period of
10 time?

11 A. There's the statement from Mr. Barry stating that he did,
12 correct?

13 Q. Well, that would be evidence, right?

14 A. Okay.

15 Q. Okay. And there's not any evidence that Mr. Barry was in
16 the room when the picture was taken, any of these pictures,
17 right, except the ones he's in?

18 A. Correct.

19 Q. So, I mean, there's no -- it would be like somebody from
20 outside the courtroom not knowing what's going inside the
21 courtroom, right?

22 A. Possibility, yes, sir.

23 Q. You wouldn't hold them liable for what we're doing, would
24 you?

25 A. In that scenario, no, sir.

Chappell - Recross by Mr. Jarvis

1 Q. Okay. Now, during this time period that -- you got
2 September 2010 to February 2011, where are all the chats that
3 he supposedly in on at truenudism.com? Do you not have any of
4 those?

5 A. No, sir -- well, they may -- again, it's not a simple, yes,
6 this is where they're at. Truenudism.com uses a chat and forum
7 function that is hosted by the Web site. Just like with
8 Web-based e-mails, that information is not necessarily fully
9 contained on the user's computer. It's not logged and saved
10 all the time. It would have to be parsed into the memory and
11 where a lot of these chats came from. Some of these chats I
12 have no idea what Instant Messenger program they used. These
13 could be from True Nudist.

14 Q. And you went there, did you -- surely you talked to
15 somebody at truenudism or truenudist.com and said, "Hey, do
16 y'all have a record of wfglassman ever being on here"?

17 A. No, sir.

18 Q. Why not?

19 A. That wasn't part of what I was doing with the
20 investigation. I never sent anything to True Nudist. I didn't
21 have anything related directly to truenudism, that Mr. Barry
22 posted child pornography at that time to the Web site.

23 Q. Well, wouldn't it have been important for you to find out
24 if he did turn in a couple of the people to the moderator,
25 because they were talking bad about sexually abusing kids or

Chappell - Recross by Mr. Jarvis

1 asking questions that led him to believe that? Wouldn't that
2 be important to confirm that he was telling the truth to
3 Detective Jones a week after the search warrant?

4 *MS. ZACK:* Objection. Calls for speculation. We
5 don't know that --

6 *THE COURT:* I'll sustain the objection.

7 BY MR. JARVIS:

8 Q. Did you send a subpoena there to that company, like you did
9 AT&T and the other company, tracking down the records? Because
10 you knew he had been to that site, right?

11 A. Correct. When I started my investigation -- or during my
12 course of investigation and I looked at truenudism or
13 truenudist.com, it was well after the fact. And most Web
14 posting companies, Web sites and Internet service providers are
15 only required to keep their records for at least 30 days. Some
16 of those don't even keep them that long, especially Web sites,
17 as they are not required to. Being how far out it was that I
18 was starting my investigation, I didn't see it pertinent or
19 that I would get any information back that would have been
20 relevant, even if they had it at all, which was highly likely
21 that they did not have it.

22 Q. And the other question Ms. Zack asked you was about you
23 must have a profile to get on part of that truenudism?

24 A. Correct.

25 Q. And somehow the profile gets you into another section,

Chappell - Recross by Mr. Jarvis

1 right?

2 A. It can, yes, sir, I believe.

3 Q. Okay. And then you said the profile can be deleted,
4 correct?

5 A. Correct.

6 Q. And when you went on there, you couldn't find his profile?

7 A. Correct. Well, part of it was you can sign up with
8 whatever you want. I don't know what he used to sign up on
9 there, if he used wfglassman, if he used a different name, if
10 he used his real name, a fake name. Wfglassman, I did not find
11 on truenudism when I searched it, to the best of my ability to
12 search it, given that I wasn't a paid member, also.

13 Q. Well, and do you recall, now that we talked about it
14 yesterday and a little bit some today, inside of the original
15 offense report, there is a statement from the men on the
16 ground, the agents on the ground there in Wichita Falls, asking
17 him to voluntarily give over his name and ID. Have you gone
18 back and looked and confirmed that?

19 A. No, sir, not since yesterday.

20 Q. Okay. Well, they took -- law enforcement, the Homeland
21 Security from the Northern District took all of his computers
22 then, right?

23 A. Correct.

24 Q. So it would be almost impossible for him to go on and
25 delete his truenudism.com, right, because he didn't have his

Chappell - Recross by Mr. Jarvis

1 computer anymore? You guys had it.

2 A. At that time, yes, sir.

3 Q. Okay. Well, to my knowledge, he has never gotten that
4 computer back. Are you aware of that?

5 A. But I don't know if he -- I'm sorry. I don't know if he
6 bought another computer or gone to a library to borrow -- I
7 mean, there's other access besides having his computer taken
8 away from him. But we did not disconnect his Internet access
9 at his house either.

10 Q. But he hasn't hidden that from law enforcement from the
11 very beginning, true; isn't that correct?

12 A. That I know of, no, sir.

13 Q. Okay. All right. Now, there was a question about the
14 file -- that some of these pictures, 4w, being created and
15 moved and put on Mr. Barry's computer, right?

16 A. Right.

17 Q. And you said it was on 6-1 and 6-18-2010, correct?

18 A. Correct.

19 Q. Well, what if -- isn't it possible that Craig Noonan could
20 have done that on his computer?

21 A. If he had had access to Mr. Barry's computer, then it's
22 possible he could have.

23 Q. Right. And you already testified and agreed with me, his
24 computer is not password protected, right?

25 A. Correct.

Chappell - Recross by Mr. Jarvis

1 Q. So I could have got on there had I been sitting next to the
2 computer and done whatever I wanted to, right?

3 MS. ZACK: Objection. Calls for speculation.
4 Relevance.

5 THE COURT: I'll sustain the objection.

6 BY MR. JARVIS:

7 Q. Well, Mr. Noonan, if the computer was at his house, had
8 access to Mr. Barry's computer, correct?

9 MS. ZACK: Objection. Calls for speculation and
10 assumes facts not in evidence. There's no evidence Mr. Barry's
11 computer was ever at Mr. Noonan's house.

12 MR. JARVIS: Judge, he's an expert. I can ask him --

13 THE COURT: That doesn't answer the question. I think
14 it was just a hypothetical. If you can state it explicitly as
15 such --

16 MR. JARVIS: Yes, ma'am.

17 THE COURT: -- that would be, I think, responsive to
18 the objection.

19 MR. JARVIS: Yes, ma'am.

20 BY MR. JARVIS:

21 Q. Well, hypothetically, if Mr. Barry's computer was at
22 Mr. Noonan's house the first week of June and I guess the
23 second or third week of June, corresponding to those two dates,
24 and if that computer is not password protected, then it is
25 entirely possible that Mr. Noonan could have put those pictures

Chappell - Recross by Mr. Jarvis

1 on Mr. Barry's computer, named a file, created a name, such as
2 "David and the boys," on both those dates, correct?

3 A. Correct.

4 Q. So did you ever find any evidence that he did not do that,
5 that Mr. Noonan didn't do that?

6 A. No, sir.

7 Q. And isn't it more likely that he created -- Mr. Noonan
8 created the name "David and the boys" than Mr. Barry creating
9 the file saying his name and the boys?

10 A. I wouldn't say -- it could go either way. I mean, I
11 wouldn't know what Mr. Barry would be thinking creating file
12 names.

13 Q. Then Ms. Zack asked you about 9a, the one with the camera?

14 A. Correct.

15 Q. Mr. Barry and Mr. Noonan sitting there and the camera going
16 one way or the other. Do you remember that one?

17 A. Correct. Yes, sir.

18 Q. Okay. All right. And you said it shows knowledge on the
19 part of David Barry that the pictures of the boys were being
20 taken, correct?

21 A. That pictures are being taken, correct, yes, sir.

22 Q. Now, let me ask you this: Does it show knowledge that
23 pictures, plural, are being taken of the boys or does it show
24 knowledge that picture, that picture or those series of
25 pictures of those two men on the bed, there's at least two,

Chappell - Recross by Mr. Jarvis

1 maybe three of them, that those pictures only are being taken?

2 A. To me it shows that pictures are being taken with the
3 cameras and the children are involved with taking pictures.

4 Q. That picture and the other picture with just the two men in
5 it, you don't know who took that picture, right?

6 A. I have -- I don't have direct evidence of who's physically
7 holding the camera, no, sir.

8 Q. You don't have any circumstantial evidence other than you
9 think you know all the people that were there, right?

10 A. Correct.

11 Q. Now, the mere fact that that picture was taken and the boys
12 are in the room -- let's assume that as a hypothetical. Okay?

13 A. Yes, sir.

14 Q. How does that translate into other pictures being taken at
15 another time in another room and David Barry having knowledge
16 of that?

17 A. Again, going back to these two sets of pictures, the file
18 paths and file names, the Instant Messenger stuff, it's the
19 totality of those is what leads me to believe that Mr. Barry
20 had knowledge these pictures were being taken and had -- and
21 didn't prevent or otherwise say not to take these pictures. He
22 didn't -- they're all there. He sent them in Instant Messenger
23 cache. They've been renamed. He's taken pictures with the
24 boys. We have pictures showing that cameras are involved.
25 Therefore, he -- to me the totality of it shows that Mr. Barry

Chappell - Recross by Mr. Jarvis

1 had knowledge and agreed with this.

2 Q. Okay. Isn't it true that it may show knowledge of those
3 pictures that Mr. Barry was in, because you've already
4 testified that you have no evidence at all, either direct or
5 circumstantial, that Mr. Barry knew of each one of these
6 individual pictures that we've talked about that y'all have
7 admitted into evidence, correct?

8 MS. ZACK: Objection. Asked and answered.

9 THE COURT: Sustained.

10 BY MR. JARVIS:

11 Q. The other question Ms. Zack asked you was about 4ee, 4bb,
12 and 4ff could be part of the same chat. You said there were
13 two distinct chats, one on this date and a third date on
14 December -- I wrote down 18th. Is that the right date?

15 A. Correct. 12-18-2010.

16 Q. Yes, sir. And that they're unlikely or by mistakes. But
17 where are the chats that go with them?

18 A. This is -- again, going back to what I had mentioned
19 earlier, these images are within the Messenger cache. The
20 Messenger cache is only for the temporary storage of files that
21 need to be rendered that are being used by the Windows
22 Messenger program. The chats are not contained in there. The
23 chats are contained in this particular case in several
24 different areas, because Windows Messenger by default does not
25 log the chats. And so what I've recovered may be part of a

Chappell - Recross by Mr. Jarvis

1 chat where these images were sent in Messenger cache, they may
2 not. I have nothing that I can directly tie these chats with
3 these pictures. I just know that the pictures were used in
4 Windows Messenger.

5 Q. Okay. And you testified under questioning of 7c, I
6 believe, 4745 -- that must be the wrong one. 7e. There's
7 nothing normal about naked men around naked boys, right? Isn't
8 that what you said?

9 A. Repeat that again, sir.

10 Q. There's nothing normal about naked men being around naked
11 boys?

12 A. Correct.

13 Q. Okay.

14 A. That are not related to them.

15 Q. Right.

16 A. Correct.

17 Q. But that's not the test for illegality, is it?

18 A. In and of itself, no, sir.

19 Q. Okay. Because it's -- a lot of stuff is not normal, but
20 that doesn't mean it's illegal, right?

21 A. Correct.

22 Q. Okay.

23 *MR. JARVIS:* Pass the witness, Judge.

24 *THE COURT:* Anything further?

25 *MS. ZACK:* No, Your Honor.

1 THE COURT: All right. Thank you. You may step down
2 sir. Thank you.

3 THE WITNESS: Thank you, ma'am.

4 MS. ZACK: Your Honor, we would like to read the
5 transcript.

6 THE COURT: That's fine.

7 MS. ZACK: Do you want Mr. Stabe to take the stand?

8 THE COURT: Yes, that would be fine. Thank you.

9 MS. ZACK: And, Your Honor, there's a direct and a
10 cross. Is it okay if I be the questioner for both of those?

11 THE COURT: Sure.

12 MS. ZACK: Okay.

13 THE COURT: Sure.

14 MS. ZACK: There's also a question by the Court.

15 THE COURT: You can be the questioner.

16 MS. ZACK: Thank you.

17 Your Honor, Mr. Peterson was called by the
18 Defendant and sworn in. At this point I will be reading
19 Mr. Jarvis's questions.

20 *(The following testimony of Mark Peterson was read:)*

21 **DIRECT EXAMINATION**

22 BY MR. JARVIS:

23 Q. Would you state your name, please.

24 A. Mark Peterson.

25 Q. And are you the life partner of David Barry?

1 A. Yes, sir.

2 Q. And how long have you been together?

3 A. 20 years.

4 Q. And where does David work?

5 A. WDS in Wichita Falls.

6 Q. How long has he been doing that?

7 A. About a year and a half.

8 Q. How old is he?

9 A. 54.

10 Q. And has he always either worked or gone to college?

11 A. Yes, sir.

12 Q. Now, how long have you and David lived in Wichita Falls?

13 A. We've lived together for 20 years. I've lived here all my
14 life, or Wichita Falls.

15 Q. And how long have y'all lived at the same address?

16 A. The last -- since 1993.

17 Q. Now, y'all had the boys arrive in '05. David formally
18 adopted them in '07. And at that point in time when David
19 adopted them and you were living there, was David a nudist at
20 that time?

21 A. No, sir.

22 Q. And did he later became one?

23 A. Yes, sir.

24 Q. Did you ever became a nudist?

25 A. I dabbled with it, but not really full time.

1 Q. Did you go visit Craig Noonan or Tim Whittington with David
2 and the boys?

3 A. No, sir.

4 Q. Now, have you seen those pictures? I guess you're going to
5 get to see them, but you've testified in the Wichita Falls
6 case, correct?

7 A. Yes, sir.

8 Q. And you saw 40 to 50, however many they wanted to of naked
9 pictures in Craig's house and Tim Whittington's house, correct?

10 A. Yes, sir.

11 Q. And that's the first time you had seen those?

12 A. Yes, sir.

13 Q. Now, when they executed the search warrant in February of
14 2011, were you there part of the time?

15 A. Yes, sir.

16 Q. And did the agents look at the pictures then on the
17 computer?

18 A. I believe so. The computer was pointing away from me, so I
19 have no idea what they were looking at, but they were looking
20 at something.

21 Q. Was anybody arrested for child pornography?

22 A. No, sir.

23 Q. And the boys were taken by CPS. How old were they?

24 A. Six and seven.

25 Q. And they were in counseling every week. Did either of them

1 make an outcry?

2 A. No, sir.

3 Q. We had a termination hearing or trial that the judge
4 already said. Did David Barry testify during that trial?

5 A. Yes, sir.

6 Q. About a day and a half, I think?

7 A. I believe so.

8 Q. And he had already given the videotapes to the Wichita
9 Falls Police Department, correct?

10 A. Pardon?

11 Q. He went a week after the search warrant and gave a taped
12 interview?

13 A. Oh, yes, sir.

14 Q. And the jury denied termination and returned the boys to
15 you and David, correct?

16 A. Yes, sir.

17 Q. Did they have any stipulations or conditions on that?

18 A. No, sir.

19 Q. How did the boys do after that back in y'all's care?

20 A. They were thrilled to be home. We couldn't get out of
21 their sight. Since then they have excelled in school. They
22 both made the honor roll this year and As and Bs all year long.

23 Q. And we have their grades if the Court needs them.

24 MS. ZACK: Then by the Court: Mr. Peterson, do you
25 also have custody of these children, legal custody?

1 *THE WITNESS:* No, sir.

2 *MS. ZACK:* The Court: It's just Mr. Barry?

3 *THE WITNESS:* Yes, sir.

4 *MS. ZACK:* The Court: So what happens if Mr. Barry is
5 not around?

6 *THE WITNESS:* For what reason?

7 *MS. ZACK:* The Court: For the kids.

8 *THE WITNESS:* Well, I mean, I was approved foster care
9 and the --

10 *MS. ZACK:* The Court: The kids would stay with you
11 though?

12 *THE WITNESS:* The kids would stay with me, yes, sir.

13 *MS. ZACK:* Back to Mr. Jarvis: We're in the process
14 of attempting that. CPS has made some requests and we're
15 trying to accomplish their goals. Right now the boys are with
16 Aunt Melonie, which is David's sister. She had them for a
17 little bit at the very beginning, away back, when she took them
18 originally, but she can't keep them for any length of time.
19 But technically he doesn't have any legal right to them.

20 The Court: Okay. Thank you.

21 BY MR. JARVIS:

22 Q. Now, how long have you and David been aware that the Feds
23 were investigating him for a federal crime in Houston?

24 A. My sister called me earlier this year and informed me of
25 it. I believe January.

1 Q. And y'all have stayed in the same place; David hasn't run?

2 A. No, sir.

3 Q. Has David ever been arrested before all this?

4 A. Last October, Tarrant County.

5 Q. For this same Tarrant County deal?

6 A. Yes, sir.

7 Q. And does David have an alcohol and drug problem?

8 A. No, sir.

9 Q. Does he have any medical issues?

10 A. Thyroid problem.

11 Q. And will he be able to abide by any conditions that the
12 judge sees fit to put on him, if the judge decides to release
13 him?

14 A. I believe so.

15 Q. Now, you know that David can't be around the boys if he's
16 released. Tell the Court what the plan is if that happens.

17 A. If the -- the plan is if he gets released, if I get
18 conservatorship, the boys will move in with me in our house and
19 the David will go with his dad.

20 Q. And his dad lives in Wichita Falls?

21 A. Yes, sir.

22 Q. And David has his sister and his brother and his dad?

23 A. Yes.

24 Q. And all live in Wichita Falls?

25 A. Yes, sir.

1 Q. Now, do y'all walk around naked anymore?

2 A. No, sir.

3 Q. And when did that stop?

4 A. As soon as they took the kids the first time.

5 Q. Back for the CPS deal?

6 A. Yes, sir.

7 Q. And has anybody -- y'all allow anybody to take pictures of
8 the boys anymore?

9 A. No, sir.

10 Q. And how active is David with the boys in school?

11 A. Oh, he's quite active as far as their schoolwork goes and
12 any kind of activities that he can go to when he can get off
13 work.

14 Q. Could either one of the boys actually even talk when they
15 dropped them off at y'all's house?

16 A. The first time?

17 Q. Yeah.

18 A. No, not really. The oldest one was 2 years old and he was
19 kind of one or two words, but that was about it and it was more
20 babble than anything else.

21 Q. And now they're making straight As?

22 A. Yes, sir.

23 MS. ZACK: Mr. Jarvis: We pass the witness, Your
24 Honor.

25 The Court: Thank you. Cross?

CROSS-EXAMINATION

1
2 BY MS. HEATH:

3 Q. Mr. Peterson, Candy Heath. You indicated that you only
4 dabbled in nudism; is that correct?

5 A. Yes, ma'am.

6 Q. Now, in the 20 years that you've been with Mr. Barry, have
7 you-all gone to nudist resorts together?

8 A. No, ma'am.

9 Q. Have you had nudist parties at your house?

10 A. No, ma'am.

11 Q. Has Mr. Noonan ever come to your house to hang out nude?

12 A. No, ma'am.

13 Q. Did Mr. Whittington come to your house to hang out nude?

14 A. No, ma'am.

15 Q. There's no nude pictures of you on Mr. Barry's computer?

16 A. No.

17 Q. In fact, there are no nude pictures of anybody else, like
18 party situations or swimming or volleyball at nudist resorts?

19 There's none of those normal nudist pictures that you would see
20 on Mr. Barry's computer, is there?

21 A. No.

22 Q. So your dabbling in nudism is just being naked around the
23 house?

24 A. Yes.

25 Q. Would you say from your knowledge of Mr. Barry's

1 activities, then his nudism is simply what he's practicing at
2 home?

3 A. Yes.

4 Q. Which, I mean, he doesn't go out to a vacation, to a nudist
5 resort, doesn't go to nudist clubs, doesn't go to, you know,
6 the local nudist resorts that they have around the Dallas-Fort
7 Worth area?

8 A. No, ma'am.

9 Q. You have since found out that Mr. Noonan is a registered
10 sex offender; is that correct?

11 A. Yes, ma'am.

12 Q. That would have been a concern that you would have had ever
13 since the boys were little, to keep them away from individuals
14 who were registered sex offenders?

15 A. Yes, ma'am.

16 Q. And do you feel that you have taken precautions to check up
17 on the people that have come in contact or that are taking of
18 the boys at any given time?

19 A. Yes, ma'am.

20 Q. In this case did you go with Mr. Barry to Mr. Noonan's
21 house in Houston?

22 A. No, ma'am.

23 Q. So you don't know anything that was going on there?

24 A. No.

25 Q. Were you aware that they had a close relationship with

1 Mr. Barry and Mr. Noonan?

2 A. Vaguely. My mother was very sick in the hospital and
3 dying. She had a kidney transplant at Methodist Hospital here;
4 and she was a diabetic, high blood pressure, heart condition.
5 I had taken her out to a doctor's visit, Dr. Nasser over here
6 on Live Oak in January. Fine all the way down there; and they
7 did blood work and immediately put her in the hospital, said
8 she was very ill. Ten minutes after they got her over there,
9 she couldn't breathe on her own. She was on a ventilator for
10 about three months, got discharged from the hospital, went home
11 in Wichita Falls --

12 *MS. ZACK:* The Court: I think what you're saying then
13 is that you were preoccupied with this and you weren't paying
14 attention to what David was doing?

15 *THE WITNESS:* Exactly, and that was for the whole
16 year.

17 BY MS. HEATH:

18 Q. And you've seen some photographs in this case; is that
19 correct?

20 A. Yes, ma'am.

21 Q. And you would agree that those photographs are very
22 inappropriate?

23 A. I wouldn't say that.

24 Q. You wouldn't want them published?

25 A. No, but I wouldn't -- even nudism I wouldn't want

1 published.

2 Q. Have you taken any new paragraphs of the boys in that
3 manner?

4 A. No.

5 Q. And you understand that the judge needs to do what's in the
6 best interest of protecting the children in this case?

7 A. Yes.

8 Q. As well as protecting anybody else in society?

9 A. Yes.

10 Q. Were you aware that Mr. Barry had naked pictures of
11 Mr. Noonan on his computer?

12 A. No.

13 Q. Were you aware that he had a naked picture of another
14 little boy in a bathtub on his computer?

15 A. No.

16 Q. And those weren't pictures that you took or that you placed
17 on his computer?

18 A. No.

19 MS. ZACK: Ms. Heath: Your Honor, pass the witness.

20 The Court: Thank you. Other questions?

21 Then by Mr. Jarvis.

22 **REDIRECT EXAMINATION**

23 BY MR. JARVIS:

24 Q. Do you recall a couple of the witnesses that testified in
25 the Wichita Falls trial, Robert and Pam Isaacksons from, I

1 think, Houston?

2 A. Yes, sir.

3 Q. And they were friends of Craig Noonan's, correct?

4 A. Yes, sir.

5 Q. And do you recall the pictures that were taken there of a
6 backyard barbecue and the kids jumping up and down in the
7 swimming pool, all naked, with Craig Noonan?

8 A. Yes, sir.

9 Q. And the Isaacksons?

10 A. Yes, sir.

11 Q. And they showed up to testify, to explain the nudists'
12 lifestyle, correct?

13 A. Yes, sir.

14 Q. And so there were pictures of other families with kids
15 about the same age, naked?

16 A. Yes, sir.

17 Q. And you have been aware of the court dates that David has
18 had for his Tarrant County case?

19 A. Yes, sir.

20 Q. And Wichita Falls case?

21 A. Yes, sir.

22 Q. Has he ever missed a date?

23 A. No, sir.

24 MS. ZACK: Mr. Jarvis: Judge, I offer the letter from
25 Judge Gonzales' court coordinator showing the dates that he has

1 been to Tarrant County and has not missed a date.

2 The Court: Okay. Thank you.

3 Mr. Jarvis: And I also have the order denying
4 termination on the CPS case.

5 The Court: Okay.

6 BY MR. JARVIS:

7 Q. Now, the instant messaging, are you aware of those pictures
8 being on instant messaging?

9 A. No, sir.

10 MS. ZACK: Mr. Jarvis: Okay. We'll pass the witness,
11 Judge.

12 The Court: Thank you. Other questions?

13 Ms. Heath: Just to clarify, Your Honor.

14 **RECROSS-EXAMINATION**

15 BY MS. HEATH:

16 Q. The picture of this barbecue, backyard barbecue, were not
17 pictures from Mr. Barry's computer; is that correct?

18 A. I'm not aware. I have no idea where they came from.

19 MS. ZACK: Ms. Heath: No further questions, Your
20 Honor.

21 The Court: Thank you.

22 Mr. Jarvis: Nothing else, Judge.

23 THE COURT: All right. Thank you. Does that conclude
24 the reading?

25 MS. ZACK: Yes, Your Honor.

1 *THE COURT:* All right. Does the Government now rest,
2 is that where we are?

3 *MS. ZACK:* One moment, Your Honor.

4 *THE COURT:* Sure.

5 *MS. ZACK:* Your Honor, I just want to clarify that
6 this is Government's -- that was just read, was Government's
7 Exhibit No. 29.

8 *THE COURT:* All right. Thank you.

9 *MS. ZACK:* And, yes, Your Honor, the United States now
10 rests.

11 *THE COURT:* Very good.

12 All right. Tell me where you are and what you
13 propose to do.

14 *MR. JARVIS:* Well, we anticipate that Mr. Barry is
15 going to testify.

16 *THE COURT:* Okay.

17 *MR. JARVIS:* That will take quite some time. And, of
18 course, we will have a motion for an instructed verdict.

19 *THE COURT:* Are you going to make your motion now?

20 *MR. JARVIS:* I guess I can, Judge.

21 *THE COURT:* Yes, I think that would be a good idea, if
22 you're going to make it.

23 *MR. JARVIS:* Yes, ma'am. I think we would ask for an
24 instructed verdict at this point. The evidence that the
25 Government has provided is a lot of pictures, but the only

1 testimony we have about Mr. Barry's involvement is he -- no
2 evidence that he knew the pictures -- those exact pictures were
3 being taken. No evidence that he consented to those pictures.
4 No evidence that he was in the room when the pictures were
5 taken. No evidence that there was a conspiracy between
6 Mr. Noonan and Mr. Barry to make those pictures. No evidence
7 that Mr. Barry intended for those pictures to be child
8 pornography. Those are the elements of the offense.

9 All they have is he was there somewhere and we
10 don't have any evidence that he didn't know about it.
11 Knowledge of the pictures is not enough to prove he conspired
12 with somebody to produce the pictures. That's all they've got.
13 That's all they brought. Their whole case is we assume he had
14 to know because he was there and he brought the kids back. But
15 the direct testimony of their witness says we have no evidence
16 that he did any of the things of the elements of the offense.
17 It's not even close.

18 *THE COURT:* Response?

19 *MS. ZACK:* Well, Your Honor, I think it has to be a
20 two-part response because there are two different --

21 *THE COURT:* That's fine.

22 *MS. ZACK:* -- there are four different counts, but
23 they address two different charges. As to Counts 1 and 2, I
24 believe that the Government has been able to demonstrate that
25 two or more persons, particularly in this case Mr. Noonan and

1 Mr. Barry, directly or indirectly reached an agreement to
2 produce child pornography, and that while there is no written
3 agreement or anyone that witnessed any kind of spoken
4 agreement, that the actions of Mr. Barry repeatedly taking his
5 children to Houston and making them available for these
6 pictures, pictures that we believe we have demonstrated he
7 knew were being taken, that were on his computer, that were
8 placed on his computer on several different dates, the fact
9 that he discusses online his children being photographed naked
10 and sending those pictures and understanding that in doing
11 so, it is illegal, demonstrates that he knew of -- that there
12 was this, in fact, agreement and that he joined in this
13 agreement willfully with the intent to further its unlawful
14 purpose.

15 And I believe as to the conspiracy, we've
16 demonstrated that. As to the production of child pornography,
17 it's very clear that these are his children that were used or
18 employed in these pictures, that the purpose of taking these
19 pictures was to create a visual depiction of this conduct and
20 that he had reason to know that they would be transported. I
21 mean, we know that they're on Mr. Noonan's camera. They're on
22 Mr. -- some are on Mr. Barry's camera. They're on Mr. Noonan's
23 computer. They're on Mr. Barry's computer. And there's a
24 great portion of these photographs that are actually the same.
25 That all of the computer media was manufactured outside of the

1 United States.

2 And now we have to get to are they child
3 pornography. And that seems to be one of the biggest questions
4 posed, that this Court has to answer. And we believe that
5 we've demonstrated by the totality of the circumstances and in
6 looking at not only the *Dost* factors, because they are not an
7 exclusive list, but in considering -- but let's consider some
8 of the *Dost* factors. These images, a great many of them are
9 taken in the bedroom and bathroom, two places regularly
10 associated with nudity. A bedroom very much associated --

11 *THE COURT:* You mean with sexual nudity?

12 *MS. ZACK:* Well, with nudity in general, but then also
13 then take it to the next level, a bedroom, certainly associated
14 with sexual nudity. A bathroom can be associated with sexual
15 nudity.

16 You have images of children naked with an adult
17 male that is not their child, with that child's buttocks
18 pressed up against the genitals of a naked adult male, bent
19 over in a position that can clearly be interpreted as sexual or
20 as simulating anal sex. You have pictures of children with
21 their legs spread, asleep on a bed in a bedroom, where the
22 focus is the genitals of one of the children. You have
23 pictures of Mr. Noonan's head in the genital region of one of
24 these children, where the child is naked. And these, again, as
25 the Court is aware, are not Mr. Noonan's children.

1 There is nothing natural about any of these
2 pictures. And if we even for a minute assume to accept this
3 nudism premise, where is the -- (A) it's not a defense. There
4 is no legal defense to child pornography, "Oh, I'm a nudist.
5 Didn't do it." That doesn't exist. There's no statutory
6 defense. But where is the evidence, other than Mr. Barry
7 espousing that he is a nudist? There's no nudist pictures in
8 their home. He's never participated in nudist activities. He
9 came to Houston and got naked with another guy that has a
10 sexual interest in children. He talks about his sexual
11 interest in children in chats. He talks about his children's
12 penises. He talks about other people coming to take pictures
13 of his children and knowing those pictures are illegal.

14 We believe that if Your Honor considers these
15 photos, these images in light of the *Dost* factors, in light of
16 the chats, in light of the fact that there's an unknown child
17 that shows up in instant messaging, pictures that are
18 incredibly similar to the pictures that we know Mr. Barry likes
19 on his computer, the bath pictures, the picture of the male
20 with the child in his genital region, three different times
21 they show up, meaning that there were three different exchanges
22 on two separate dates. This is not an accident. This is an
23 individual who has a sexual interest in children, who found
24 like-minded individuals to hang out with, and is now hiding
25 behind the guise of, "I'm a nudist."

1 And we believe we've demonstrated that the
2 photographs in this case, not every single one that we put into
3 evidence, because that wasn't the purpose of them, but that the
4 majority of the photographs where the children are naked and
5 either with each other, alone, or with an adult are, in fact,
6 child pornography, and we would ask that you deny their motion.

7 *THE COURT:* What is the role or relevance of the
8 information that Mr. Noonan was a registered sex offender?

9 *MS. ZACK:* None. Absolutely none. When I said that
10 was with like-minded individuals, I mean that from the evidence
11 we have presented. I don't believe this Court should consider
12 that fact, that he's a registered sex offender.

13 *THE COURT:* And is that because there's no evidence
14 that that was known to Mr. Barry at the time?

15 *MS. ZACK:* Correct. We cannot demonstrate that he
16 knew that.

17 *THE COURT:* All right. Just seeking a clarification.

18 *MS. ZACK:* Yes, Your Honor.

19 *THE COURT:* Did you want to respond?

20 *MR. JARVIS:* Just briefly, Judge. I think the
21 attitude of the agent was made clear about his views on these
22 pictures, when just the mere nudity is enough to be child
23 pornography in his opinion. I don't believe that's the law.
24 If you look at the *Dost* factors, I know they're not exclusive,
25 but that's what the Fifth Circuit goes on, these pictures are

1 nothing more than naked pictures. Had there been any erect
2 penises, any actual touching, and any type of simulated or
3 sexual innuendo even, but all they have is a naked boy laying
4 on top or laying next to a naked man. There's no sexual
5 activity, no supposed sexual activity, no simulated sexual
6 activity, when there sure could have been, had these been
7 really wanted to be child pornography. They're just naked
8 pictures of naked little boys running around, as they've been
9 described, little monkeys.

10 There's nothing to show, even if you believe that
11 those pictures are child pornography, which I disagree with,
12 there's nothing to show Mr. Barry participated in that
13 activity. That's the problem with the Government's case.
14 They've got two hurdles. And their own witness testified, they
15 have no evidence about those elements of the crime.

16 *THE COURT:* Well, I think we have several points on a
17 continuum here. At one bookend, no one is arguing that mere --
18 that the mere fact that children, particularly one's own
19 children, are nude in the pictures and the children are small,
20 that that is in and of itself enough to amount to child
21 pornography. No one is arguing -- I mean, but that's one
22 point. Your argument that nudity alone is not sufficient,
23 certainly in the context of pictures of one's own children,
24 prepubescent, clearly right.

25 On the other hand, if you are arguing that there

1 have to be -- that the children have to be portrayed in
2 explicit sexual acts in order for child pornography to be
3 present, I think that is an overstatement and an inaccurate
4 characterization of the law.

5 *MR. JARVIS:* I agree.

6 *THE COURT:* So I think we are somewhere in between.
7 And the question is whether there is a sufficient basis to find
8 child pornography to overrule your motion at this point. And I
9 think there is.

10 I also think there is a sufficient basis to
11 overrule your motion on the basis of -- on the question of the
12 sufficiency of the proof of Mr. Barry's own involvement. The
13 fact that this is on his computer; the fact that he has all
14 these connections to the activity; the fact that he's in the
15 pictures, many of them; the fact that he is bringing the
16 children into the setting in which the children are being
17 photographed time after time after time; the fact that he has
18 these chats that connect to the subject of the photographs, I
19 think that is more than enough to connect the photographs and
20 their content to Mr. Barry. So I'm going to overrule your
21 motion.

22 And I agree that it is now too late today to
23 begin -- given the scheduling, to begin your case. Are you
24 going to have any witnesses other than Mr. Barry, based on what
25 you know now?

1 *MR. JARVIS:* No, ma'am.

2 *THE COURT:* And how long do you anticipate -- and I'm
3 not holding you to any arbitrary time. I'm just trying to get
4 some scheduling sense. How long do you anticipate your direct
5 of Mr. Barry?

6 *MS. MINICK:* It will be me questioning Mr. Barry,
7 Judge.

8 *THE COURT:* That's fine.

9 *MS. MINICK:* And I would say at least a couple of
10 hours --

11 *THE COURT:* No, that's fine.

12 *MS. MINICK:* -- for my part, possibly more.

13 *THE COURT:* All right. And you think about the same,
14 a couple of hours on cross? Some time on cross?

15 *MS. ZACK:* I hope not a couple of hours, but it will
16 just depend, Your Honor.

17 *THE COURT:* And just think, you get to lead.

18 *MS. ZACK:* Very excited about that, Your Honor.

19 *THE COURT:* All right. Let's -- I've got the morning
20 clear. So let's begin tomorrow morning, if we could, at, say,
21 8:30. Does that work? I do have a couple of calls in the
22 afternoon. So I would hope very much that we are done before
23 then, but we'll see.

24 And will the parties be able to provide me with
25 proposed findings and conclusions at some point tomorrow?

1 *MS. ZACK:* I hope so, Your Honor, yes. I'm going to
2 do my best, for the Government, to provide that.

3 *MR. JARVIS:* Judge, we don't have an office down here,
4 so it's going to be kind of difficult for us. And if you find
5 Mr. Barry not guilty, which is what we would ask for, I don't
6 know if I need to be proposing findings of fact and conclusions
7 of law at that time.

8 *THE COURT:* Well, you've asked for them. What's the
9 Government's position?

10 *MR. JARVIS:* Well, if we lose, but if we win, I hope
11 to go home and don't do any more work.

12 *MS. ZACK:* Your Honor, I mean, certainly I don't know
13 whether the Court's intention is to rule immediately from the
14 bench upon the conclusion of taking of the evidence. If Your
15 Honor wanted to provide us a day or two to prepare these, once
16 they return to Wichita Falls, I don't know. I mean, I
17 certainly can provide them. I don't know what to say about
18 them hedging their bets that -- we don't have a problem
19 providing them.

20 *THE COURT:* I think it would be helpful. But I gather
21 the parties are not in a position to tell me when precisely
22 they might have them ready?

23 *MR. JARVIS:* No, ma'am. I've never had to do in a
24 criminal case proposed findings of fact and conclusions of law,
25 as to the defense. Are you proposing to us -- for both of us

1 to provide them and you get to pick?

2 *THE COURT:* If you don't want to provide them, that's
3 fine.

4 *MR. JARVIS:* Okay.

5 *THE COURT:* That is just fine. You are welcome to.
6 It's not required.

7 *MR. JARVIS:* Thank you, Judge.

8 *THE COURT:* All right. And I don't know what the
9 Government's preference is. If you are going to provide them,
10 I would like them by tomorrow if at all possible.

11 *MS. ZACK:* We will do our best, yes, Your Honor.

12 *THE COURT:* All right. Thank you. Very good.

13 Anything further -- and I don't want to be
14 unreasonable, but if I can rule from the bench, I would like to
15 do so. I don't want to make these lawyers come back in order
16 to do closing arguments and have -- and make findings from the
17 bench, nor do I -- but I can certainly rule in a written
18 opinion, which will take significantly longer, but I don't want
19 to do that either unless I absolutely have to.

20 *MR. JARVIS:* Yes, ma'am.

21 *MS. MINICK:* I do anticipate, Judge, that it will be a
22 good portion of tomorrow. Did you say you had stuff tomorrow
23 afternoon?

24 *THE COURT:* I have stuff, but I have -- I think that
25 we should have a significant amount of the afternoon available.

1 *MS. MINICK:* Okay.

2 *THE COURT:* So you'll have most of the day tomorrow,
3 with a few interruptions.

4 *MS. MINICK:* Thank you, Judge.

5 *THE COURT:* And Thursday morning if we need it, but I
6 don't -- it doesn't sound like it's going to be critical. All
7 right. All right. Thank you very much.

8 *MR. JARVIS:* Thank you, Judge.

9 *MS. ZACK:* Thank you, Your Honor.

10 (Pause.)

11 *THE COURT:* All right. Thank you. Go ahead.

12 *MS. MINICK:* Thank you, Judge. Kim Minick for the
13 defense. Just a technical question. There may be some
14 pictures that have -- we were provided I believe last week off
15 of Mr. Barry's camera that have not been admitted --
16 preadmitted or that have been addressed on our exhibit list
17 that we presented to the Court. If those come up, how would
18 the Court like me to --

19 *THE COURT:* Are you going to offer them --

20 *MS. MINICK:* Yes. Yes. Okay. Would you like me to
21 have them premarked?

22 *THE COURT:* If you can, that would certainly make it,
23 I think, a little bit more efficient.

24 *MS. MINICK:* I will try to do that, Judge, but I just
25 wanted to make sure it was still acceptable at that point, how

